

ARKANSAS CODE  
OF 1987  
ANNOTATED

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# ARKANSAS CODE OF 1987 ANNOTATED



## VOLUME 6A 2011 Replacement TITLE 8: ENVIRONMENTAL LAW (CHAPTERS 5-14)

*Prepared by the Editorial Staff of the Publisher*

Under the Direction and Supervision of the  
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## Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2011 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2011 Ark. LEXIS 519 (October 13, 2011) and 2011 Ark. App. LEXIS 652 (October 12, 2011).

Federal Supplement through October 7, 2011.

Federal Reporter 3d Series through October 7, 2011.

United States Supreme Court Reports through October 7, 2011.

Bankruptcy Reporter through October 7, 2011.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

ALR 6th through Volume 55, p. 635.

ALR Fed. 2d through Volume 46, p. 473.

## **Titles of the Arkansas Code**

- |   |  |
|---|--|
| 1. General Provisions   | 16. Practice, Procedure, and Courts                  |
| 2. Agriculture  | 17. Professions, Occupations, and<br>Businesses      |
| 3. Alcoholic Beverages  | 18. Property   |
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| 8. Environmental Law  | 23. Public Utilities and Regulated In-<br>dustries   |
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## **User's Guide**

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.





# TITLE 8

## ENVIRONMENTAL LAW

### (CHAPTERS 1-4 IN VOLUME 6)

#### CHAPTER.

1. GENERAL PROVISIONS.
2. ENVIRONMENTAL TESTING.
3. WATER AND AIR POLLUTION GENERALLY.
4. ARKANSAS WATER AND AIR POLLUTION CONTROL ACT.
5. WATER POLLUTION CONTROL FACILITIES.
6. DISPOSAL OF SOLID WASTES AND OTHER REFUSE.
7. HAZARDOUS SUBSTANCES.
8. INTERSTATE COMPACTS.
9. RECYCLING.
10. POLLUTION PREVENTION.
11. ENVIRONMENTAL REGULATORY FLEXIBILITY.
12. NATURAL RESOURCES DAMAGES TRUST FUND.
13. MANAGEMENT ORGANIZATION.
14. SHIELDED OUTDOOR LIGHTING ACT.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

#### RESEARCH REFERENCES

**Ark. L. Notes.** Kelley, An Annotated Bibliography of Selected Environmental

Law Resources of Interest to Practicing Attorneys, 1995 Ark. L. Notes 111.

## CHAPTER 5

### WATER POLLUTION CONTROL FACILITIES

#### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. WASTEWATER TREATMENT PLANTS.
3. WATER POLLUTION CONTROL PROJECTS — GRANTS AND BONDS. [REPEALED.]
4. WATER POLLUTION CONTROL STATE GRANT ACT. [REPEALED.]
5. UNDERGROUND SALT WATER DISPOSAL SYSTEMS.
6. ARKANSAS PRIVATIZATION ACT.
7. CHRONIC NONCOMPLIANCE.
8. SMALL BUSINESS REVOLVING LOAN FUND.
9. LONG-TERM ENVIRONMENTAL PROJECTS.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

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“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

#### RESEARCH REFERENCES

**Am. Jur.** 61A Am. Jur. 2d, Pollution Control, § 129 et seq.

**C.J.S.** 39A C.J.S., Health & Environment, § 106 et seq.

#### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

#### SUBCHAPTER 2 — WASTEWATER TREATMENT PLANTS

##### SECTION.

- 8-5-201. Definitions.
- 8-5-202. Penalty and injunctions.
- 8-5-203. Unlawful actions.
- 8-5-204. Licensing committee.
- 8-5-205. Powers and duties generally.

##### SECTION.

- 8-5-206. Classification of treatment plants.
- 8-5-207. Operators to be licensed.
- 8-5-208. License requirements.
- 8-5-209. Fees.

**Effective Dates.** Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 estab-

lished the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 288, § 5: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of major importance to the state's best interest to have all revenues of the Department of Pollution Control and Ecology deposited into the State Treasury for better accountability of financial resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

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## 8-5-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission or its successor;

(2) "Department" means the Arkansas Department of Environmental Quality or its successor;

(3) "License" means a certificate of competency issued by the department to operators who have met the requirements of the licensing program;

(4) "Licensing committee" means the committee of operators and technicians hereinafter established to assist and advise the department in the examining and licensing of operators;

(5)(A) "Operator" means any person who is in responsible charge of the operation of a wastewater treatment plant, in whole or in part, and who, during the performance of his or her regular duties,



exercises individual judgment which directly or indirectly may affect the proper operation of the plant.

(B) "Operator" shall not be deemed to include an official solely exercising general administrative supervision; and

(6) "Wastewater treatment plant" means any plant, disposal field, lagoon, pumping station, or other works:

(A) That use chemical or biological processes for:

(i) Treating, stabilizing, or disposing of sewage, industrial wastewaters, or other wastewaters; or

(ii) The reduction and handling of sludge removed from such wastewater; and

(B) From which:

(i) A discharge to the waters of the state occurs; or

(ii) Municipal wastewater is land-applied.

**History.** Acts 1971, No. 211, § 2; A.S.A. 1947, § 82-1984; Acts 1997, No. 1219, § 7; 1999, No. 719, § 1; 1999, No. 1164, § 39.

### **8-5-202. Penalty and injunctions.**

(a) A violation of any provision of this subchapter or of any rule or regulation issued pursuant to this subchapter shall constitute a misdemeanor and upon conviction shall be punishable as such. Each day's continuance of a violation shall constitute a separate offense.

(b) Any violation of this subchapter shall be subject to injunction proceedings brought by the Arkansas Department of Environmental Quality in a court of competent jurisdiction.

(c) A violation of any provision of this subchapter or of any rule or regulation promulgated under this subchapter is grounds for an administrative revocation or suspension of the operator's license by the department.

**History.** Acts 1971, No. 211, § 9; A.S.A. 1947, § 82-1991; Acts 1997, No. 1219, § 7; 2005, No. 729, § 1.

### **8-5-203. Unlawful actions.**

It shall be unlawful for any municipality, governmental subdivision, public or private corporation, or other person to operate a public or private wastewater treatment plant unless the competency of the operator is duly licensed by the Arkansas Department of Environmental Quality under the provisions of this subchapter. It shall further be unlawful for any person to perform the duties of an operator of any such plant without being duly licensed under this subchapter.

**History.** Acts 1971, No. 211, § 8; A.S.A. 1947, § 82-1990; Acts 1991, No. 1103, § 1; 1997, No. 1219, § 7.

**8-5-204. Licensing committee.**

(a)(1) There is created and established a licensing committee to advise and assist the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Environmental Quality in the administration of the licensing program.

(2) The committee shall be composed of eight (8) members:

(A) Five (5) members, to be appointed by the commission, of which three (3) members shall be active wastewater treatment plant operators licensed by the commission and two (2) members shall be employed by a private corporation or industry located in Arkansas and nominated at large by the corporations or industries for service on the committee;

(B) One (1) member, to be appointed by the commission, shall be an employee of a municipality operating a wastewater treatment plant who holds the position of chief administrative officer, city engineer, director of public utilities, or other equivalent position;

(C) One (1) member, to be appointed by the commission, shall be a faculty member of an accredited college, university, or professional school in this state whose major field is related to water resources or sanitary engineering; and

(D) One (1) member shall be the Director of the Arkansas Department of Environmental Quality or a qualified member of his or her staff who shall act as executive secretary of the licensing committee.

(b)(1) In the event of a vacancy, a new member shall be appointed by the commission to serve out the unexpired term.

(2) No member shall serve more than two (2) consecutive three-year terms.

(c)(1) State agency members of the licensing committee shall receive no additional salary or per diem for their services as members of the committee, but they may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The members appointed by the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

**History.** Acts 1971, No. 211, § 6; A.S.A. 1947, § 82-1988; Acts 1993, No. 556, § 1; 1997, No. 250, § 46; 1997, No. 697, § 2; 1997, No. 1219, § 7; 1999, No. 719, §§ 2, 3; 1999, No. 1164, § 40.

**Publisher's Notes.** The mileage reimbursement provision in subsection (c) of this section may be affected by § 25-16-

802 concerning mileage reimbursement for members of state boards and commissions.

The 1997 amendment by No. 697 was almost identical to that by No. 250, except that Acts 1997, No. 697 inserted "they" in (c)(1) and "and stipends" in (c)(2).

**8-5-205. Powers and duties generally.**

(a) The Arkansas Department of Environmental Quality or its successor shall be charged with the responsibility of administering and enforcing this subchapter, with the advice and assistance of the

licensing committee, and is given and charged with the following powers and duties:

(1) To conduct examinations for licensing, which shall be conducted at least annually and more frequently as the Arkansas Pollution Control and Ecology Commission shall deem necessary;

(2) To issue licenses to qualified wastewater treatment plant operators, to renew those licenses, and to suspend or revoke the licenses for cause, after due notice and hearing;

(3) To institute court proceedings to compel compliance with the provisions of this chapter and the rules and regulations issued pursuant thereto; and

(4) To participate financially in programs sponsored by the Arkansas Water Environment Association or its successor, provided that the participation shall not exceed the sum of one thousand dollars (\$1,000) per fiscal year.

(b)(1) The commission shall serve as the rulemaking and appointment authority for implementation of this subchapter.

(2) Its powers shall include:

(A) To adopt rules and regulations implementing and effectuating this subchapter as may be necessary for the administration and enforcement thereof;

(B) To make appointments to the licensing committee in accordance with this subchapter; and

(C) To set reasonable licensure and examination fees to cover the costs of administration of this subchapter.

**History.** Acts 1971, No. 211, § 3; A.S.A. 1947, § 82-1985; Acts 1993, No. 556, § 2; 1997, No. 1219, § 7; 1999, No. 1164, § 41.

### **8-5-206. Classification of treatment plants.**

(a) The Arkansas Pollution Control and Ecology Commission shall, through regulations, classify all wastewater treatment plants, taking into account:

(1) The size, type, and complexity of the plant;

(2) The character and volume of wastewater treated;

(3) The population served;

(4) The skill, knowledge, and experience reasonably required to supervise the proper operation of the plant; and

(5) Such other factors as the commission shall deem appropriate.

(b) The Arkansas Department of Environmental Quality shall license persons as to their qualifications to supervise successfully the proper operation of plants within classifications based on the recommendations of the licensing committee.

**History.** Acts 1971, No. 211, § 5; A.S.A. 1947, § 82-1987; Acts 1997, No. 1219, § 7.



**8-5-207. Operators to be licensed.**

In order to safeguard the public health and protect the waters of this state from pollution, all operators in responsible charge of public or private wastewater treatment plants shall be duly licensed and certified as competent by the Arkansas Department of Environmental Quality under the provisions of this subchapter and under such rules and regulations as the Arkansas Pollution Control and Ecology Commission may adopt, with the advice and assistance of the licensing committee, pursuant to the authority of this subchapter. All rules and regulations promulgated pursuant to this subchapter shall be reviewed by the interim House Committee on Public Health, Welfare, and Labor and the interim Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

**History.** Acts 1971, No. 211, § 1; A.S.A. 1947, § 82-1983; Acts 1991, No. 1103, § 2; 1997, No. 179, § 2; 1997, No. 1219, § 7.

**8-5-208. License requirements.**

(a) The Arkansas Department of Environmental Quality shall license and certify all applicants for licenses under this subchapter who satisfy the requirements of the subchapter and the rules and regulations issued pursuant to this subchapter. Licenses shall be granted according to the classification of wastewater treatment plants established under this subchapter. Licenses shall be valid for a period of two (2) years and shall be renewable upon application without examination.

(b) All operators of wastewater treatment plants within the state shall apply to the department for a license.

(c) In its discretion, the department may waive the requirements or any part of the requirements for formal examination of an applicant for license if the applicant holds a valid license or certificate from another state in which the requirements for license in the appropriate classification are at least equal to the requirements set forth in this subchapter and the rules and regulations issued pursuant to this subchapter.

**History.** Acts 1971, No. 211, § 4; A.S.A. 1947, § 82-1986; Acts 1997, No. 1219, § 7; 2005, No. 729, § 2; 2007, No. 544, § 1. **Amendments.** The 2007 amendment substituted "two (2) years" for "one (1) year" in (a).

**8-5-209. Fees.**

(a)(1) The Arkansas Pollution Control and Ecology Commission shall have the authority to set fees in an amount to cover the cost of the administration of this subchapter.

(2)(A) Licensing and examination fees shall be set forth in the regulation.

(B) However, the fees shall not exceed:

(i) A combined examination and license fee of forty dollars (\$40.00); and

(ii) An annual license renewal fee of twenty dollars (\$20.00).

(b) The Wastewater Licensing Fund is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. All fees collected under the provisions of this section shall be deposited into this fund and may be used only for the administration of this subchapter.

**History.** Acts 1971, No. 211, § 7; A.S.A. 1997, No. 288, § 1; 1997, No. 1219, § 7; 1947, § 82-1989; Acts 1991, No. 1104, § 1; 1999, No. 777, § 1.

### SUBCHAPTER 3 — WATER POLLUTION CONTROL PROJECTS — GRANTS AND BONDS

#### SECTION.

8-5-301 — 8-5-319. [Repealed.]

**Effective Dates.** Acts 2003, No. 548, § 5: July 1, 2003. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that administration of the clean water fund is of critical importance to the citizens of Arkansas, that the fund may be administered more efficiently by an agency that specializes in the administration of numerous other revolving loan programs associated with environmental projects, and that the provisions of this act

are necessary to preserve and improve the efficient administration of these programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 2003."

**Cross References.** Municipal water and sewer revenue bonds issued to refund revenue bonds, § 14-72-101.

### 8-5-301 — 8-5-319. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 2003, No. 548, § 4. The subchapter was derived from the following sources:

8-5-301. Acts 1971, No. 108, § 1; A.S.A. 1947, § 82-1914.1.

8-5-302. Acts 1971, No. 108, § 2; A.S.A. 1947, § 82-1914.1.

8-5-303. Acts 1971, No. 108, § 3; 1971, No. 544, § 1; A.S.A. 1947, § 82-1914.2.

8-5-304. Acts 1971, No. 108, § 4; A.S.A. 1947, § 82-1914.3.

8-5-305. Acts 1971, No. 108, § 5; 1975, No. 225, § 21; 1981, No. 425, § 20; A.S.A. 1947, § 82-1914.4.

8-5-306. Acts 1971, No. 108, § 6; A.S.A. 1947, § 82-1914.5.

8-5-307. Acts 1971, No. 108, § 7; 1975, No. 225, § 21; 1981, No. 425, § 20; A.S.A. 1947, § 82-1914.6.

8-5-308. Acts 1971, No. 108, § 8; A.S.A. 1947, § 82-1914.7.

8-5-309. Acts 1971, No. 108, § 9; A.S.A. 1947, § 82-1914.8.

8-5-310. Acts 1971, No. 108, § 10; A.S.A. 1947, § 82-1914.9.

8-5-311. Acts 1971, No. 108, § 11; A.S.A. 1947, § 82-1914.10.

8-5-312. Acts 1971, No. 108, § 12; A.S.A. 1947, § 82-1914.11.

8-5-313. Acts 1971, No. 108, § 13; A.S.A. 1947, § 82-1914.12.

8-5-314. Acts 1971, No. 108, § 14; A.S.A. 1947, § 82-1914.13.

8-5-315. Acts 1971, No. 108, § 15; A.S.A. 1947, § 82-1914.14.

8-5-316. Acts 1971, No. 108, § 16; A.S.A. 1947, § 82-1914.15.

8-5-317. Acts 1971, No. 108, § 17; A.S.A. 1947, § 82-1914.16.

8-5-318. Acts 1971, No. 108, § 18; A.S.A. 1947, § 82-1914.17.

8-5-319. Acts 1989, No. 701, § 1; 1993, No. 3, § 1; 1999, No. 1164, § 42.

## SUBCHAPTER 4 — WATER POLLUTION CONTROL STATE GRANT ACT

### SECTION.

8-5-401 — 8-5-404. [Repealed.]

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**Effective Dates.** Acts 2003, No. 548, § 5: July 1, 2003. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that administration of the clean water fund is of critical importance to the citizens of Arkansas, that the fund may be administered more efficiently by an agency that specializes in the administration of numerous other revolving loan pro-

grams associated with environmental projects, and that the provisions of this act are necessary to preserve and improve the efficient administration of these programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 2003."

## 8-5-401 — 8-5-404. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 2003, No. 548, § 4. The subchapter was derived from the following sources:

8-5-401. Acts 1972 (Ex. Sess.), No. 64, § 1; A.S.A. 1947, § 82-1915.

8-5-402. Acts 1972 (Ex. Sess.), No. 64, § 2; A.S.A. 1947, § 82-1915.1.

8-5-403. Acts 1972 (Ex. Sess.), No. 64, § 3; A.S.A. 1947, § 82-1915.2; Acts 1999, No. 1164, § 43.

8-5-404. Acts 1972 (Ex. Sess.), No. 64, § 3; A.S.A. 1947, § 82-1915.2; Acts 1999, No. 1164, § 44.

## SUBCHAPTER 5 — UNDERGROUND SALT WATER DISPOSAL SYSTEMS

### SECTION.

8-5-501. Regulation of systems generally.  
8-5-502. Penalty for violation of § 8-5-501.

### SECTION.

8-5-503. Denial of tax deductions.  
8-5-504. Chlorides standard.  
8-5-505. [Repealed.]

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**Effective Dates.** Acts 2011, No. 791, § 11: effective on and after Jan. 1, 2012.

**Preambles.** Acts 1969, No. 254 contained a preamble which read: "Whereas, some individuals, partnerships and corporations are operating oil wells and have been purporting to inject salt water back into the ground and claiming tax exemptions as allowed under Acts 57 and 138 of Acts of the General Assembly of the State of Arkansas, of 1959; and

"Whereas, while claiming tax exemptions some have been violating the provi-

sions of said acts and have been discharging salt water and waste oil into streams and at such places that the same have been seeping and going into branches and streams; and

"Whereas, the Pollution Control Commission seems to be unable under the present laws and rules to control pollution; and

"Whereas, its employees cannot properly enforce orders against pollution; and

"Whereas, the 5-year plan entered into in 1957 has failed to stop pollution; and



"Whereas, more definite rules are "Now, therefore...."  
needed;

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### **8-5-501. Regulation of systems generally.**

(a)(1) The Arkansas Pollution Control and Ecology Commission and the Oil and Gas Commission are empowered to establish reasonable rules, regulations, and specifications for the establishment and operation of underground salt water disposal systems to be used in disposing of salt water produced in the production of oil.

(2)(A) Any person wishing to establish an approved underground salt water disposal system shall make application to the commissions for a permit to construct and operate the system for the purpose of obtaining the benefits of the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206 — 26-58-210, and 26-58-211 [repealed].

(B) The application shall include:

(i) A description of the underground salt water disposal system that is to be established;

(ii) The plans and specifications thereof;

(iii) The location of the system and the number and location of the salt water producing oil wells to be served by the system;

(iv) The name of each oil producer to be served;

(v) A description of the underground level or strata into which the salt water is to be injected; and

(vi) Such other information as may be required by rules and regulations of the respective commissions.

(b)(1) If the commissions determine that the underground salt water disposal system for which application is made will meet the requirements of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206 — 26-58-210, and 26-58-211 [repealed], and the rules and regulations of the commissions, a permit for the establishment of the system shall be issued.

(2)(A) Upon the completion of the underground salt water disposal system, the commission granting the permit provided for in this section shall cause an inspection of the system to be made.

(B)(i) If the commission determines that the system is in compliance with the requirements of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206 — 26-58-210, and 26-58-211 [repealed], and the rules and regulations of the commission, a certificate of approval of the system shall be granted.

(ii) The certificate of approval shall be signed by the chair and secretary of the commission.

(iii) Copies of the certificate of approval shall be furnished, upon application therefor, to each oil producer who disposes of salt water through such approved underground salt water disposal system.

(3)(A) The commission granting the certificate of approval shall, from time to time, inspect the approved underground salt water disposal system.

(B)(i) If a determination is made that the system is being operated in a manner contrary to the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206 — 26-58-210, and 26-58-211 [repealed], or the rules and regulations of the commission, the commission may revoke the certificate of approval until such time as a showing may be made that the deficiencies in the system have been corrected to the satisfaction of the commission.

(ii) No oil producer shall be entitled to the benefits of the provisions of this section, §§ 8-5-502, 26-58-201 — 26-58-204, 26-58-206 — 26-58-210, and 26-58-211 [repealed], during the period in which the certificate of approval is revoked.

**History.** Acts 1959, No. 57, § 4; A.S.A. 1947, § 84-2116.

### 8-5-502. Penalty for violation of § 8-5-501.

Any person violating the provisions of § 8-5-501 shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned not less than thirty (30) days nor more than one (1) year, or be both so fined and imprisoned.

**History.** Acts 1959, No. 57, § 8; A.S.A. 1947, § 84-2120.

**Publisher's Notes.** Acts 1959, No. 57, § 8, is also codified as § 26-58-203.

### 8-5-503. Denial of tax deductions.

(a) Should any individual, partnership, corporation, or employee knowingly or negligently cause, let, or permit salt water to flow, seep, or otherwise escape from the leased premises, the rights of the party to claim tax deductions or credits under §§ 8-5-501, 8-5-502, and 26-58-201 — 26-58-210 will be denied for a period of twelve (12) months.

(b)(1) Any individual can file a complaint before the Arkansas Pollution Control and Ecology Commission against anyone for violations of this section and secure a hearing.

(2)(A) If the commission should find that the accused has violated this section, then the violator shall be denied any tax exemption for a period of one (1) year.

(B) Any violation of this section during the period of the suspension shall extend the suspension one (1) year from the date of the last violation.

**History.** Acts 1969, No. 254, §§ 1-3; A.S.A. 1947, §§ 84-2120.1 — 84-2120.3; Acts 2011, No. 791, § 1.

**Amendments.** The 2011 amendment substituted “§§ 8-5-501, 8-5-502, and 26-

58-201 — 26-58-210” for “§§ 8-5-501, 8-5-502, 26-58-201 — 26-58-204, 26-58-206 — 26-58-210, and 26-58-211 [repealed]” in (a).

**Effective Dates.** Acts 2011, No. 791, § 11: effective on and after Jan. 1, 2012.

8-5-504. Chlorides standard.

Should the water of any stream of this state have more than two hundred fifty (250) parts per million of chlorides as a result of a violation of this subchapter, then the Arkansas Pollution Control and Ecology Commission shall seek to learn of the source of the pollution and take steps to eliminate the source of pollution.

**History.** Acts 1969, No. 254, § 4; A.S.A. 1947, § 84-2120.4; Acts 2003, No. 1180, § 1.

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2003 Arkansas General Assembly, Environmental Law, 26 U. Ark. Little Rock L. Rev. 405.

8-5-505. [Repealed.]

**A.C.R.C. Notes.** This section, concerning fees, was derived from Acts 1959, No. 57, § 7. Acts 1959, No. 57, § 7 was also codified as § 26-58-211 [repealed]. Section 26-58-211 was repealed by Acts 1993, No. 344, § 2. The title of Acts 1993, No. 344 was “an act to repeal certain taxes and fees levied by Arkansas Code Annotated which generate minimal revenue and are an administrative burden on the state; and for other purposes.” Accordingly, it appears that this section was impliedly repealed by Acts 1993, No. 344, § 2.

SUBCHAPTER 6 — ARKANSAS PRIVATIZATION ACT

- SECTION.
- 8-5-601. Title.
  - 8-5-602. Legislative policy.
  - 8-5-603. Definitions.
  - 8-5-604. Construction.
  - 8-5-605. Applicability.
  - 8-5-606. Privatization contracts generally.
  - 8-5-607. Service agreements generally.
  - 8-5-608. Privatization contracts and service agreements — Assignment.
  - 8-5-609. Privatization contracts, service

- SECTION.
- agreements, etc. — Exemption from certain laws.
  - 8-5-610. Privatization contracts, service agreements, etc. — Exemption from Arkansas Public Service Commission’s jurisdiction.
  - 8-5-611. Tax exemption.
  - 8-5-612. Wastewater projects and solid waste disposal projects are industrial facilities for other acts.

**Effective Dates.** Acts 1985, No. 690, § 12: Mar. 28, 1985. Emergency clause provided: “It is hereby found and declared by the General Assembly that historically a significant portion of the funding of the cost of construction of wastewater projects has been provided through grants from the United States of America and in recent years funds available to local governments for such grants have been substantially reduced thereby placing an

increasingly intolerable burden on local governments to provide the cost of constructing and improving such sewer service and facilities and there is an immediate and pressing need to provide such service, and that alternate means of financing and acquisition are needed. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the protection of the public peace, health and safety, shall take



effect, and be in full force, immediately on its passage and approval.”

### CASE NOTES

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep’t of Pollution Control & Ecology, 137 B.R. 735 (E.D. Ark. 1992); Get Rid of It, Inc. v. City of Smackover, 59 Ark. App. 93, 952 S.W.2d 192 (1997).

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### 8-5-601. Title.

This subchapter shall be known and cited as the “Arkansas Privatization Act”.

**History.** Acts 1985, No. 690, § 1; A.S.A. 1947, § 82-1992.

### 8-5-602. Legislative policy.

The General Assembly declares that the policy of this state is to assure its citizens adequate public services, particularly wastewater projects, and solid waste disposal projects, at reasonable cost, and that such services are essential to the maintenance and general welfare of the citizens of this state and to the continued expansion of the state’s economy, job market, and industrial base. However, the cost of constructing, owning, and operating capital facilities to meet the demand for those public services is becoming increasingly burdensome to cities, counties, and improvement districts, and it is desirable that innovative financing mechanisms be made available to assist the communities of this state in developing wastewater projects and solid waste disposal projects at reasonable cost. Private sector ownership and operation of capital facilities providing public services can result in cost savings to communities contracting for those public services. It is, therefore, in the best public interest of the state and its citizens that cities, counties, and improvement districts be authorized to cause such services to be provided by private enterprise and to contract with private owners or operators for providing the services to the public.

**History.** Acts 1985, No. 690, § 2; A.S.A. 1947, § 82-1992.1; Acts 1991, No. 629, § 1.

### 8-5-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Chief executive” means the mayor of a municipality, the county judge of a county, or the chair of an improvement district, commission, agency, or similar body;

(2) “Clerk” means the city clerk or town recorder of a municipality, the county clerk of a county, or the secretary of the board of commis-

sioners of an improvement district, commission, agency, or similar body;

(3) "Cost" means the cost of acquiring, constructing, and financing any privatization project and placing the privatization project in service, including, without limitation:

(A) The cost of acquisition and construction of any facility or any modification, improvement, or extension of that facility;

(B) Any cost incident to the acquisition of any necessary property, easement, or right-of-way;

(C) Engineering or architectural fees, legal fees, and fiscal agents' and financial advisors' fees;

(D) Any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed privatization project; and

(E) Costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications, and the inspection and supervision of the construction of any facility and any other cost incurred by the local government;

(4) "Facility" means any structure, building, machinery, system, land, right, permit, or other property necessary or desirable for the ownership and operation of a wastewater project or solid waste disposal project, including, without limitation, all related and appurtenant easements and rights-of-way, improvements, utilities, equipment, and furnishings;

(5) "Local government" means a city or incorporated town in the State of Arkansas, any county in the State of Arkansas, an improvement district organized under the law of the State of Arkansas, or any other political subdivision, agency, or instrumentality of the State of Arkansas or any of the foregoing;

(6) "Ordinance" means an ordinance, resolution, or other appropriate legislative enactment of the governing body of a local government;

(7) "Private owner or operator" means a person, firm, corporation, or partnership that is not a public entity and which owns or operates a privatization project;

(8)(A) "Privatization" means any wastewater project or solid waste disposal project, including projects acquired from a local government, which is owned or operated by a private owner or operator and provides the related service to the public.

(B) This includes, but is not limited to:

(i) The acquisition, construction, reconstruction, repair, alteration, modernization, renovation, improvement, or extension of any such project, whether or not in existence or under construction, and financing the cost of those activities;

(ii) The purchase, installation, or financing of equipment, machinery, and other personal property required by such project; and

(iii) The acquisition, improvement, or financing of real property and the extension or provision of utilities, access roads, and other appurtenant facilities, all of which are to be used or occupied by any

person in providing wastewater projects or solid waste disposal projects;

(9) "Solid waste" means all putrescible and nonputrescible wastes in solid or semisolid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepaper, waste paper-board, and all other solid and semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities;

(10) "Solid waste disposal project" means any facility designed and operated for the disposition by landfilling, incinerating, composting, or other method of disposing of solid waste; and

(11) "Wastewater project" means sewage collection systems and treatment plants, including, without limitations, intercepting sewers, outfall sewers, force mains, pumping stations, instrumentation and control systems, and other appurtenances necessary or useful for the collection, removal, reduction, treatment, purification, disposal, and handling of liquid and solid waste, sewage and industrial waste, and refuse.

**History.** Acts 1985, No. 690, § 3; A.S.A. 1947, § 82-1992.2; Acts 1991, No. 629, §§ 2-4.

#### **8-5-604. Construction.**

(a) This subchapter shall be construed liberally to effect its purposes and neither this subchapter nor anything contained herein is or shall be construed as a restriction or limitation upon any powers which any local government or private owner or operator might otherwise have under any laws of this state, and the provisions of this subchapter are cumulative to any such powers.

(b) This subchapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to other laws.

**History.** Acts 1985, No. 690, § 9; A.S.A. 1947, § 82-1992.8.

#### **8-5-605. Applicability.**

This subchapter does not apply to the disposition of surplus property by a local government, nor to any other action of a local government which is not connected with a privatization contract.

**History.** Acts 1985, No. 690, § 6; A.S.A. 1947, § 82-1992.5.



**8-5-606. Privatization contracts generally.**

(a) Any local government may enter into a privatization contract with a private owner or operator to accomplish the transfer of any local government-owned wastewater project or solid waste disposal project or the designing, construction, operation, maintenance, or financing of cost, or any combination thereof, of a wastewater project or solid waste disposal project, pursuant to the provisions of this subchapter.

(b)(1) A local government considering entering into a privatization contract pertaining to its municipally owned wastewater project or solid waste disposal project, or any portion thereof, shall publish notice of its intention to adopt an ordinance to accomplish the privatization.

(2) The notice shall:

(A) Set forth a brief summary of the privatization contract provisions; and

(B) Set a time and place for a public hearing to be conducted by the chief executive.

(3) The notice shall be published in a newspaper having general circulation within the county in which a substantial portion of the project is located by one (1) publication each week for a period of two (2) weeks. The first publication shall be not less than fourteen (14) days prior to the adoption of the ordinance approving the execution of the privatization contract.

(c) The hearing may be held in conjunction with any hearing on the question of issuing bonds to finance the cost of the privatization project, on the question of adoption of the service agreement, or any other question.

(d) A copy of the proposed privatization contract shall be filed as a public record with the clerk of the local government not less than two (2) weeks prior to the adoption of the ordinance.

**History.** Acts 1985, No. 690, § 4; A.S.A. 1947, § 82-1992.3; Acts 1991, No. 629, § 5.

**8-5-607. Service agreements generally.**

(a)(1) In connection with a privatization contract, a local government, if authorized by ordinance of its governing body, may enter into one (1) or more service agreements with a private owner or operator pursuant to which the private owner or operator will provide one (1) or more sewer services or solid waste disposal services to or for the benefit of the local government.

(2) The service agreement may provide for the purchase by the local government of all or any part of the capacity, capability, or output of the facilities used to provide the applicable sewer service or solid waste disposal service and shall contain such other terms and conditions as the local government and the private owner or operator may provide, including, without limitation, the charges or rates for the services and a covenant by the local government to maintain rates sufficient to pay

debt service incurred in connection with the financing of construction of a wastewater or solid waste disposal project.

(b)(1) Prior to the execution of a service agreement, the local government shall publish notice of its intention to adopt an ordinance to accomplish the service agreement.

(2) The notice shall:

(A) Set forth a brief summary of the service agreement provisions; and

(B) Set a time and place for a public hearing to be conducted by the chief executive.

(3) The notice shall be published in a newspaper having general circulation within the county in which a substantial portion of the project is located by one (1) publication each week for a period of two (2) weeks. The first publication shall be not less than fourteen (14) days prior to the adoption of the ordinance approving the execution of the service agreement.

(c) The hearing may be held in conjunction with any hearing on the question of issuing bonds to finance the cost of the privatization project, on the question of adoption of the service agreement, or any other question.

(d) A copy of the proposed service agreement shall be filed as a public record with the clerk of the local government not less than two (2) weeks prior to the adoption of the ordinance.

**History.** Acts 1985, No. 690, § 5; A.S.A. 1947, § 82-1992.4; Acts 1991, No. 629, § 6.

### **8-5-608. Privatization contracts and service agreements — Assignment.**

The privatization contract or the service agreement may be assigned by either party to secure the performance of any obligation in connection with the financing of the construction or operation of a wastewater or solid waste disposal project.

**History.** Acts 1985, No. 690, § 4; A.S.A. 1947, § 82-1992.3; Acts 1991, No. 629, § 7.

### **8-5-609. Privatization contracts, service agreements, etc. — Exemption from certain laws.**

The privatization contract, the service agreement, and any other purchase by the local government in connection with the privatization contract shall not be subject to the provisions of §§ 14-58-201 — 14-58-203, 14-58-301 — 14-58-303, 14-58-305 — 14-58-308, and 14-22-101 — 14-22-115 or any other law or regulation requiring competitive bids.

**History.** Acts 1985, No. 690, § 4; A.S.A. 1947, § 82-1992.3.

### **8-5-610. Privatization contracts, service agreements, etc. — Exemption from Arkansas Public Service Commission's jurisdiction.**

The service agreement, the privatization contract, the charges and rates for sewer or other service, and private owners or operators shall not be subject to Acts 1935, No. 324, as amended, and § 23-4-201, and shall be exempt from the jurisdiction of the Arkansas Public Service Commission and any other successor regulatory agency.

**History.** Acts 1985, No. 690, § 5; A.S.A. 1947, § 82-1992.4.

**Publisher's Notes.** Acts 1935, No. 324 referred to in this section is codified as §§ 14-200-101, 14-200-103 — 14-200-108, 14-200-111, 23-1-101 — 23-1-112, 23-2-301, 23-2-303 — 23-2-308, 23-2-310, 23-2-312, 23-2-314 — 23-2-316, 23-2-402, 23-2-

404 [repealed], 23-2-405, 23-2-408, 23-2-410 — 23-2-412, 23-2-414 — 23-2-421, 23-2-426, 23-2-428, 23-2-429, 23-3-101 — 23-3-107, 23-3-112 — 23-3-115, 23-3-118, 23-3-119, 23-3-201 — 23-3-206, 23-4-102, 23-4-103, 23-4-105 — 23-4-109, 23-4-205, 23-4-402 — 23-4-405, 23-4-407 — 23-4-418, 23-4-620 — 23-4-634, 23-18-101.

### **8-5-611. Tax exemption.**

No income, sales, use, ad valorem, or other tax, assessment, or license shall be levied upon or collected with respect to any property which is held by or purchased by a private owner or operator for the public purpose of performing a privatization contract or a service agreement, since the property benefits the public.

**History.** Acts 1985, No. 690, § 7; A.S.A. 1947, § 82-1992.6.

### **8-5-612. Wastewater projects and solid waste disposal projects are industrial facilities for other acts.**

For purposes of any other law, including, without limitation, § 14-164-201 et seq., the term "facilities" or a similar term shall include a wastewater project or solid waste disposal project as those terms are defined in this subchapter, so that any law adopted authorizing the issuance of industrial development bonds, industrial development revenue bonds, or similar evidences of indebtedness shall be available for utilization in connection with a privatization project.

**History.** Acts 1985, No. 690, § 8; A.S.A. 1947, § 82-1992.7; Acts 1991, No. 629, § 8.

## **SUBCHAPTER 7 — CHRONIC NONCOMPLIANCE**

#### **SECTION.**

8-5-701. Definitions.

8-5-702. Remedies for chronic violations.

#### **SECTION.**

8-5-703. Financial assurance requirements for subsequently



permitted common sewage systems.

### 8-5-701. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Chronic noncompliance" means conditions described in this subchapter that persist at a common sewage system after reasonable efforts by the Arkansas Department of Environmental Quality to obtain compliance with applicable laws or regulations in one (1) of the following:

(A) Failure to obtain a permit as required by law;

(B) Four (4) or more permit violations within a six-month period as set out in the permit issued by the department;

(C) Failure to maintain the services of a certified wastewater treatment operator, where applicable; or

(D) Demonstrable failure to operate the sewage system so as to prevent the discharge of waterborne pollutants in unacceptable concentrations, as defined in the individual permit or the state's water quality standards, to the surface waters or groundwater of the state; and

(2)(A) "Common sewage system" means any sewage treatment system and its associated sewage collection and pumping facilities, nonmunicipal, publicly or privately owned, serving two (2) or more individually owned, rented, or temporarily occupied lots for the purpose of the collection or disposal of sewage.

(B) This term includes systems owned or operated by:

(i) Property owners' associations;

(ii) Nonmunicipal sewage improvement districts; and

(iii) Owners or managers of nonmunicipal residential subdivisions.

**History.** Acts 1995, No. 336, § 1; 1999, No. 1164, § 45.

### 8-5-702. Remedies for chronic violations.

(a) The Arkansas Department of Environmental Quality may petition a circuit court with competent jurisdiction and proper venue to remedy chronic violations by any common sewage system.

(b) The court may order any relief authorized by applicable laws, including:

(1) The imposition of civil penalties;

(2) The revocation of the entity's permit; and

(3) A court order compelling the entity supplying potable water to the common sewage system to cut off the flow of potable water.

(c)(1) If the court finds that circumstances prevent the owner or operator of a common sewage system from operating and maintaining the system in compliance with the law, the Arkansas Department of Environmental Quality shall nominate two (2) possible receivers, of

which the court may appoint one (1) to operate the system, subject to the continuing jurisdiction of the court.

(2) Any such receiver appointed by the court may exercise any and all legal powers and rights assigned by law to the original owner or operator of the common sewage system, but is immune to any personal liability associated with the operation of the common sewage system.

(3) Once a receiver is appointed by the court to operate the common sewage system, the court may make available to the receiver funds pledged by the common sewage system under the minimal financial assurance provision of this subchapter, and, in addition, the receiver may assess rates as necessary to operate and maintain the system. The receiver is explicitly authorized to operate the common sewage system with the proceeds collected from the facilities which are connected to such common sewage system. The receiver shall receive a reasonable professional fee for this service, which shall be determined by the court. The proceeds collected by the receiver shall be maintained in an account at a national bank located within the State of Arkansas. The receiver shall report to the court, from time to time, how the proceeds have been collected and spent by the receiver.

(d)(1) If the court determines that the permitted or registered entity cannot equitably satisfy the provisions of this subchapter or that no feasible alternatives exist, the court shall so certify that determination to the Arkansas Department of Environmental Quality, which shall terminate the entity's permit, and the court shall request a review by the Director of the Department of Health of the public health impact of an order compelling the entity supplying potable water to the common sewage system to cut off the flow of potable water.

(2)(A) If the Director of the Department of Health determines that a greater health hazard exists from the malfunctioning sewage system than from the discontinuance of potable water service, then the Director of the Department of Health shall so certify this determination to the court.

(B) The court shall then issue an order compelling the receiver to notify all users of such system, including landowners and tenants, of the Director of the Department of Health's determination.

(C) Upon evidence of reasonable notice, the court shall then issue the order to cut off the flow of potable water.

(e) The Arkansas Department of Environmental Quality is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of rules, regulations, orders, permits, or plans issued pursuant thereto;

(2) Affirmatively order remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the Arkansas Department of Environmental Quality and any other agency or subdivision of

the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant thereto; or

(5) Recover civil penalties assessed pursuant to § 8-4-103(c).

(f)(1) In addition to the remedies provided in subsections (a)-(e) of this section, the Arkansas Department of Environmental Quality shall have the authority to prohibit new or additional sewer line connections onto a common sewage system meeting the criteria established by § 8-5-701.

(2) Once the Arkansas Department of Environmental Quality is satisfied that the common sewage system is in compliance with state and federal law, the Arkansas Department of Environmental Quality may authorize new or additional sewer line connections onto the common sewage system.

**History.** Acts 1995, No. 336, § 1; 1997, No. 287, § 1; 1999, No. 1164, §§ 46-49.

### **8-5-703. Financial assurance requirements for subsequently permitted common sewage systems.**

(a)(1)(A) The Arkansas Department of Environmental Quality may require a permitted common sewage system that is in chronic noncompliance to demonstrate to the department its financial ability to cover the estimated costs of operating and maintaining the common sewage system for a minimum period of five (5) years.

(B) The department may require the permitted common sewage system that is in chronic noncompliance to submit a cost estimate for a third party to operate and maintain the common sewage system each year for a period of five (5) years.

(2) The department shall not modify or renew a National Pollutant Discharge Elimination System permit or state permit for a common sewage system if the common sewage system facility is in chronic noncompliance and the common sewage system facility proposes to use new technology that in the discretion of the department cannot be verified to meet permit requirements.

(b) The applicant's financial ability to operate and maintain the system for a period of five (5) years shall be demonstrated to the department by:

(1) Obtaining insurance that specifically covers operation and maintenance costs;

(2) Obtaining a letter of credit;

(3) Obtaining a surety bond;

(4) Obtaining a trust fund or an escrow account; or

(5) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.



(c) The department may require an amount of financial assurance that exceeds the cost estimate submitted by the applicant.

(d) A financial instrument required by this section shall be posted to the benefit of the department and shall remain in effect for the life of the permit.

(e) It is explicitly understood that the department shall not directly operate and shall not be responsible for the operation of any sewage system.

(f) This section does not restrict local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.

**History.** Acts 1995, No. 336, § 1; 1999, No. 1164, §§ 50, 51; 2007, No. 832, § 2; 2009, No. 409, § 2.

**A.C.R.C. Notes.** As enacted by Acts 1995, No. 336, § 1, subdivision (a)(1) and subsection (b) began: "After the effective date of this Act." Acts 1995, No. 336,

became effective July 28, 1995.

**Amendments.** The 2007 amendment rewrote the section.

The 2009 amendment rewrote (a) through (c), and made minor stylistic changes in (d) and (f).

## SUBCHAPTER 8 — SMALL BUSINESS REVOLVING LOAN FUND

### SECTION.

8-5-801. Title.

8-5-802. Purpose.

8-5-803. Definitions.

8-5-804. Eligible activities.

8-5-805. Eligible applicants.

### SECTION.

8-5-806. Terms of the revolving loan.

8-5-807. Small Business Revolving Loan Fund.

8-5-808. Administration of the program.

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**Effective Dates.** Acts 1997, No. 691, § 6; July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the

event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

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### 8-5-801. Title.

This subchapter may be called the "Small Business Revolving Loan Fund for Pollution Control and Prevention Technologies Act".

**History.** Acts 1997, No. 691, § 1.

### 8-5-802. Purpose.

It is the purpose of this subchapter to authorize the Arkansas Department of Environmental Quality to establish and administer a revolving loan fund to encourage the investment in pollution control and prevention technologies in Arkansas. The fund will promote sustainable economic development in Arkansas by establishing a publicly capitalized revolving loan fund to make loans to small businesses for projects to meet regulatory mandates in pollution control, to adopt pollution prevention technologies, or to implement waste reduction practices.

**History.** Acts 1997, No. 691, § 1; 1999, No. 1164, § 52; 2001, No. 213, § 1.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 475.

### 8-5-803. Definitions.

As used in this subchapter:

(1) "Applicant" means any business concern operating within the State of Arkansas that meets the criteria of a person, corporation, partnership, or other business organization;

(2) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(3) "Department" means the Arkansas Department of Environmental Quality;

(4) "Director" means the executive head and active administrator of the Arkansas Department of Environmental Quality;

(5) "Mandated environmental control" means any change in a commercial process that is required by federal or state environmental law or duly adopted regulation;

(6)(A) "Pollution prevention" means reducing or eliminating the generation of pollutants and waste at the source.

(B) As used in this subchapter, "pollution prevention" shall be expanded to also include process modifications and equipment acquisitions that promote the recovery and reuse of pollutants.

(C) Specifically excluded from this definition of eligible activities are investments in waste treatment processes or equipment, unless the treatment involves the recovery and reuse of pollutants.

(D) Pollution prevention also may include the acquisition and installation of capital equipment, a process change, or a combination of capital equipment and process change; and

(7) "Waste reduction" means handling or processing waste materials in a way that ultimately reduces the total quantity of waste disposed. This includes process modifications and equipment acquisitions that promote the recovery, reuse, or recycling of pollutants and wastes.



**History.** Acts 1997, No. 691, § 1; 1999, No. 1164, §§ 53, 54; 2001, No. 213, § 2; 2005, No. 1254, § 1.

#### **8-5-804. Eligible activities.**

(a) Moneys deposited in the Small Business Revolving Loan Fund within the Arkansas Department of Environmental Quality may be:

(1) Loaned to eligible participants to pay the direct costs of projects which are designed to correct or avoid violations of federal or state environmental regulations and have received a certificate of need from the department; or

(2) Expended to pay costs incurred by the department to provide management of lending activities.

(b)(1) It is the purpose of this subchapter to authorize the department to establish and administer a revolving loan fund to encourage the investment in pollution control, pollution prevention, and waste reduction practices in Arkansas.

(2) Such a fund will promote sustainable economic development in Arkansas by establishing a publicly capitalized revolving loan fund to make loans to small businesses for projects to meet regulatory mandates in pollution control or to adopt pollution prevention technologies.

(3) Operating expenses associated with proofing a process change or equipment modification would be an eligible loan activity.

**History.** Acts 1997, No. 691, § 1; 1999, No. 1164, § 55; 2001, No. 213, § 3.

#### **8-5-805. Eligible applicants.**

(a) An eligible applicant shall:

(1) Employ one hundred (100) or fewer individuals, including both full-time and part-time employees, through direct hiring or contract, including affiliates and subsidiaries, at the time an application for a loan is received by the Arkansas Department of Environmental Quality;

(2) Provide proof of profitable operations and a demonstrated ability to repay the loan; and

(3) Submit an application supplied by the department including any supporting documents, instruments, or other documents requested by the department for the purposes of recommending approval or disapproval of a loan described in this section.

(b)(1) Until all delinquent fees stated in this subsection or otherwise owed to the department are paid in full and no balance is due, the Director of the Arkansas Department of Environmental Quality shall not approve any loan application.

(2) The delinquent fees include, but are not limited to:

(A) Permit fees;

(B) Permit modification fees;

(C) License fees;

- (D) Certification fees;
- (E) Registration fees;
- (F) Variance application fees;
- (G) Civil penalties;
- (H) Emergency response reimbursements;
- (I) Loan payments; and
- (J) Review fees.

**History.** Acts 1997, No. 691, § 1; 2005, No. 1254, § 2.

### **8-5-806. Terms of the revolving loan.**

(a)(1) The maximum loan amount shall be:

(A) Forty-five thousand dollars (\$45,000) per mandated pollution control project;

(B) Forty-five thousand dollars (\$45,000) per pollution prevention project; and

(C) Forty-five thousand dollars (\$45,000) per waste reduction project.

(2) The maximum allowable amount to be loaned shall not exceed sixty-five thousand dollars (\$65,000) per individual applicant.

(b) The maximum term of the loan shall be ten (10) years per mandated pollution control project and ten (10) years per pollution prevention or waste reduction project.

(c) The interest rate shall be:

(1) Established by the Arkansas Department of Environmental Quality at or below market rate; and

(2) Fixed for the term of each loan at the rate that is in effect when the loan application is received or when the loan is closed, whichever is lower.

(d)(1) The borrower shall be required to make level monthly amortizing payments to retire the debt by the end of the loan term.

(2) Loan principal may be repaid in part or in full at any time without penalty.

(e)(1) The department may:

(A) Make secured or unsecured loans with a promissory note;

(B) Collect interest on any loans issued; and

(C) Assess penalties on late loan payments.

(2) Loans issued under this subchapter may contain an acceleration clause.

(f) The department may bring any lawful action to recover any loan that is in default.

**History.** Acts 1997, No. 691, § 1; 1999, No. 1164, § 56; 2001, No. 213, § 4; 2005, No. 1254, § 3.

**8-5-807. Small Business Revolving Loan Fund.**

(a) There is created within the Arkansas Department of Environmental Quality a revolving loan fund:

(1) Which shall be designated the “Small Business Revolving Loan Fund”;

(2) Into which shall be transferred or deposited the moneys to be provided by law for the fund; and

(3) To be used as a revolving fund by the department for making loans to eligible participants to pay the direct costs of projects that are designed to correct or avoid violations of federal or state environmental regulations and have received a certificate of need from the department or to pay costs incurred by the department to provide management of lending activities.

(b)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Small Business Revolving Loan Fund”.

(2) This fund shall consist of the following:

(A) All funds transferred from the General Improvement Fund to be otherwise provided by law for the fund;

(B) All moneys received by the department upon repayment of loans made from the furnishing of funds for loans under the program created by this subchapter;

(C) Interest earned upon any money in the fund; and

(D) All sums recovered upon by the fund for losses to the fund or for loan losses under the loan program created in this subchapter and all other moneys received for the fund from any source.

(c)(1) Subject to the provisions of this subchapter, the department is vested with full power, authority, and jurisdiction over the fund, including all moneys and property or securities belonging to the fund.

(2) The department may invest the fund in direct general obligations of the United States, in certificates of deposit or savings accounts in an amount not to exceed the capital funds, represented by capital, surplus, and undivided profits in financial institutions located in Arkansas that are insured by an agency of the federal government, and in repurchase agreements that are collateralized by direct general obligations of the United States or by bonds, notes, debentures, participation certificates, or other obligations issued by an agency of the United States, the principal and interest of which are guaranteed by the agency or the United States.

**History.** Acts 1997, No. 691, § 1; 1999, No. 1164, §§ 57, 58; 2005, No. 1254, § 4.

**8-5-808. Administration of the program.**

The Arkansas Department of Environmental Quality will manage the program through its Small Business Assistance Program. The program is authorized to delegate the management of the Small Business



Revolving Loan Fund. The department shall retain the power to issue certificates of need for eligible projects and shall not delegate such authority.

**History.** Acts 1997, No. 691, § 1; 1999, No. 1164, § 59.

## SUBCHAPTER 9 — LONG-TERM ENVIRONMENTAL PROJECTS

### SECTION.

8-5-901. Legislative findings and intent.

8-5-902. Definitions and applicability.

8-5-903. Procedures for approval of environmental projects, contents of applications, and public notice.

### SECTION.

8-5-904. Modification of water quality standards.

8-5-905. Project completion.

### 8-5-901. Legislative findings and intent.

The General Assembly hereby finds that many areas of the state would benefit from long-term environmental remediation projects that significantly improve the effects caused by industrial or extractive activities. However, commitments by private enterprise to remedy such damages are discouraged by the prospect of civil liability based upon rigid application of state water quality standards to the enterprise's activities. The purpose of this subchapter is to preserve the state's approach to establishing water quality standards, while also encouraging private enterprises to make significant improvements to closed or abandoned sites that are of such magnitude that more than three (3) years would be required to complete the project.

**History.** Acts 1997, No. 401, § 1.

### 8-5-902. Definitions and applicability.

For the purposes of this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Long-term improvement project" or "project" means any remediation or reclamation project at closed or abandoned:

(A) Mineral extraction sites;

(B) Solid waste management units as defined pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.;

(C) Oil and gas extraction sites;

(D) Brownfield Sites as defined in Acts 1995, No. 125 or as may be amended; and



(E) Hazardous substance sites listed on the National Priority List, 42 U.S.C. § 9605, or state priority list, § 8-7-509(e), or as may be amended; and

(4) "Water quality standard" means standards developed through administrative rulemaking by the commission.

**History.** Acts 1997, No. 401, § 2; 1999, No. 1164, § 60.

### **8-5-903. Procedures for approval of environmental projects, contents of applications, and public notice.**

(a) A petitioner seeking approval of a change in water quality standards to accommodate a long-term environmental improvement project shall file with the Arkansas Department of Environmental Quality a notice of intent, which includes as a minimum:

(1) A description of the water body or stream segment affected by the project;

(2) The existing ambient water quality for the use of criteria at issue;

(3) The affected water quality standard;

(4) The modifications sought;

(5) The proposed remediation activities;

(6) A proposed remediation plan, which shall contain:

(A) A description of the existing conditions, including identification of the conditions limiting the attainment of the water quality standards;

(B) A description of the proposed water quality standard modification, both during and post-project;

(C) A description of the proposed remediation plan; and

(D) The anticipated collateral effects, if any, of the remediation plan; and

(7) A schedule for implementing the remediation plan that ensures that the post-project water quality standards are met as soon as reasonably practicable.

(b) The department shall cause notice of the proposed project and associated water quality standard changes described in subsection (a) of this section to be published for public notice and comment in the same manner as provided for permit applications in § 8-4-203(c), and shall notify the public that the details of the proposed project are available for public review.

(c)(1) After considering comments from the public, the department shall notify the petitioner as to whether the proposed project is approved or denied.

(2) The department may deny approval of a project if it reasonably concludes that:

(A) The plan is not complete;

(B) The plan is not technically sound;

(C) The schedule is unrealistic;

(D) The plan will not have an overall beneficial effect for the environment; or

(E) For other appropriate reasons.

(3) Any department determination on the approval or denial of a project is subject to the appeal procedures applicable to permitting decisions set out in § 8-4-205.

(d) Upon approval of the project for further development, the petitioner shall prepare documentation required for third-party rulemaking by § 8-4-202 and established in administrative procedures.

**History.** Acts 1997, No. 401, § 3; 2009, in (b), substituted “8-4-203(c)” for “8-4-203(b)” and made minor stylistic changes.

**Amendments.** The 2009 amendment,

### **8-5-904. Modification of water quality standards.**

(a) The Arkansas Pollution Control and Ecology Commission may approve a modification where the water quality standard is not being maintained due to conditions which may, in part or in whole, be corrected through the implementation of long-term measures. The commission shall establish such subcategory of use and modify such general and specific standards as it deems appropriate to reflect such modification while ensuring that the fishable/swimmable use is maintained. In all water quality standard changes associated with long-term environmental projects, the remedial action plan described in § 8-5-903(a) shall be incorporated by reference in the statement of basis and purpose of the rule and shall be considered an essential condition of the modified water quality standard.

(b)(1) Once the commission approves a water quality standard modification, the Arkansas Department of Environmental Quality shall ensure that conditions and limitations designed to achieve compliance with the plan are established in applicable discharge permits, consent administrative orders, or such other enforcement measures deemed appropriate by the department.

(2) The department may allow modifications by the petitioner to the remediation plan and schedule as is deemed appropriate, provided that any such modifications to the original remedial action plan shall not render the project significantly less protective of the applicable use subcategory.

(3) Should the department find that the petitioner is not acting in good faith to complete the project in accordance with the approved plan, applicable and appropriate enforcement authority may be exercised subject to appeal to the commission.

(c) The department or the petitioner shall report annually to the commission on the progress of the project.

**History.** Acts 1997, No. 401, § 4.

**8-5-905. Project completion.**

At the end of the project, the post-project water quality standards shall be in full force and effect.

**History.** Acts 1997, No. 401, § 5.

**CHAPTER 6****DISPOSAL OF SOLID WASTES AND OTHER REFUSE****SUBCHAPTER.**

1. GENERAL PROVISIONS. [RESERVED.]
2. SOLID WASTE MANAGEMENT ACT.
3. COUNTY SOLID WASTE MANAGEMENT SYSTEM AID FUND.
4. LITTER CONTROL ACT.
5. ILLEGAL DUMP ERADICATION AND CORRECTIVE ACTION PROGRAM ACT.
6. SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT.
7. REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND BOARDS.
8. BONDS BY REGIONAL SOLID WASTE MANAGEMENT DISTRICTS.
9. LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES.
10. LANDFILL POST-CLOSURE TRUST FUND.
11. LANDFILL SERVICE AREAS.
12. DISPOSAL OF INCINERATOR ASH AND PETROLEUM-CONTAMINATED SOILS.
13. COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES.
14. RESIDENTIAL USE OF LANDFILLS.
15. SITING HIGH IMPACT SOLID WASTE MANAGEMENT FACILITIES.
16. FINANCIAL ASSURANCE.
17. OPEN BURNING OF RESIDENTIAL YARD WASTE.
18. ANIMAL WASTE.
19. STATEWIDE SOLID WASTE MANAGEMENT PLAN ACT.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-5 and 8-10 may not apply to subchapters 6, 7, 11-16, 17, 18, and 19 which were enacted subsequently.

References to “this chapter” in subchapters 1-4, 6-16, and §§ 8-6-501 — 8-6-506 may not apply to § 8-6-509 or § 8-6-510, which were enacted subsequently.

Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking

roles for the State’s regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.



“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of

Pollution Control and Ecology prior to the effective date of the name change.”

## SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

## SUBCHAPTER 2 — SOLID WASTE MANAGEMENT ACT

### SECTION.

- 8-6-201. Title.
- 8-6-202. Purpose.
- 8-6-203. Definitions.
- 8-6-204. Criminal, civil, and administrative penalties.
- 8-6-205. Illegal actions — Rebuttable presumption — Acts or omissions by third party.
- 8-6-206. Private right of action.
- 8-6-207. Powers and duties of the department and commission generally.
- 8-6-208. Existing rules, regulations, etc.
- 8-6-209. Local standards.
- 8-6-210. Agreements authorized.
- 8-6-211. Municipal solid waste management systems.

### SECTION.

- 8-6-212. County solid waste management systems.
- 8-6-213. [Repealed.]
- 8-6-214. Records and examinations.
- 8-6-215 — 8-6-217. [Superseded.]
- 8-6-218. [Repealed and superseded.]
- 8-6-219. Applicants for permits — Applicability.
- 8-6-220. Yard waste.
- 8-6-221. Review of rules and regulations.
- 8-6-222. Standards for sites and facilities.
- 8-6-223. Household hazardous waste storage or processing centers — Permit required.

**A.C.R.C. Notes.** References to “this subchapter” in §§ 8-6-201 — 8-6-214 and 8-6-219 — 8-6-221 may not apply to §§ 8-6-215 — 8-6-217 [superseded], 8-6-222 and 8-6-223 which were enacted subsequently.

**Cross References.** Permit fees for air, water, and solid waste pollution control activities, § 8-1-101 et seq.

**Effective Dates.** Acts 1971, No. 237, § 15: Mar. 9, 1971. Emergency clause provided: “It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential to the health, welfare and safety of the people of the State of Arkansas, and to the conservation of natural resources and the minimizing of environmental damage that adequate sites and facilities be made available promptly for the proper disposal and recycling of solid wastes; that existing practices and laws are inadequate; that this act and the implementation thereof are necessary to the accomplishment of the foregoing purposes and to the welfare of the State of Arkansas and her people.

Therefore, an emergency is hereby declared to exist, and this act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 531, § 5: Mar. 14, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the present requirements for the issuance, transfer or modification of a permit for a solid waste management disposal site or facility are insufficient and the people of this state are not adequately protected; that this act provides additional requirements for issuance, transfer or modification of permits and is necessary for the protection of the people of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”



Acts 1991, No. 454, § 6: Mar. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Director of the Department of Pollution Control and Ecology is in need of additional authority to deny applications for the issuance or transfer of permits if he determines that an applicant, or person with substantial influence over the applicant, has a history of non-compliance with environmental laws or regulations; this act provides such authority and should be given immediate effect in order to grant additional environmental protection as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the protection of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 993, § 5: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interests of the citizens of this state that landfills be spaced at least fifteen (15) miles apart; that this act is necessary to protect the health of the citizens of this state; and that this act should become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1007, § 7: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that city and county governments and solid waste authorities are not permitted to collect delinquent solid waste management system fees and service charges under the county property tax collection system which county subordinate service districts are currently authorized to use; that the use of the county property tax collection system will improve fee collection and increase revenues for county solid waste management; and that, at this time, there is an increasingly critical need to collect all necessary revenues to support the operation of city and county solid waste management systems and solid waste authorities. Therefore, in order to promote the effective collection of delinquent solid waste fees or service

charges at this critical time, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1057, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the sanctions imposed by current Arkansas law for environmental violations are among the least stringent in the nation. Thus, current law is inadequate to deter environmental violations, and in fact extends an implicit invitation to irresponsible industries. Protection of the environmental integrity of this state is essential to protect the public's health and economic well-being. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1280, § 9: Apr. 21, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in citing landfill facilities at the local level. It is found that the authority granted to municipalities and counties to adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than those adopted by the federal, state and regional laws, rules, regulations and orders has exacerbated and attenuated this crises and could thwart or jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place estab-

lished the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Act 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the

decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively."

Acts 2011, No. 174, § 2: Mar. 4, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that counties face a significant risk of nonpayment when a tenant is registered as an occupant for purposes of payment of solid waste management fees and charges; that an increasing number of tenants are not paying county solid waste management fees and charges; and that this act is necessary because counties are losing an increasing amount of revenue as the result of nonpayment of fees and charges by transient tenants. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**ALR.** Private landowner's disposal of solid waste on own property. 37 A.L.R.4th 635.

**Am. Jur.** 61A Am. Jur. 2d, § 244 et seq.

**Ark. L. Notes.** Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology De-

partment and Commission, 1988 Ark. L. Notes 23.

**C.J.S.** 39A C.J.S., Health & Env., §§ 44, 45.

**U. Ark. Little Rock L.J.** Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

## CASE NOTES

### ANALYSIS

#### Purpose.

Authority of Local Governments.

Causes of Action.

Statute of Limitations.

#### Purpose.

The Arkansas Solid Waste Management Act, § 8-6-201 et seq., does not expressly grant municipalities the power to grant exclusive solid waste disposal franchises; however, the legislative intent to displace



competition can be inferred from the statutory scheme because it is a necessary and reasonable consequence of engaging in the authorized activity. Regulation of solid waste management is one of the traditional public health functions of local government, and the legislative scheme contemplates displacing competition with regulation in the area of solid waste management and disposal. *L & H Sanitation, Inc. v. Lake City Sanitation, Inc.*, 769 F.2d 517 (8th Cir. 1985).

#### **Authority of Local Governments.**

Neither the Arkansas Solid Waste Management Act nor the Resource Conservation and Recovery Act have preempted the authority of local governments to adopt additional landfill standards as provided for in this statute. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

#### **Causes of Action.**

The legislature intended that the State be able to bring claims for natural resource damages under this subchapter and under §§ 8-4-101 et seq. and 8-7-201 et seq. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

#### **Statute of Limitations.**

The environmental protection provisions found in this subchapter and §§ 8-4-101 et seq. and 8-7-201 et seq., are regulatory and protective rather than penal, and therefore the statute of limitations for penal actions, § 16-56-108, does not apply. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

### **8-6-201. Title.**

This subchapter may be cited as the "Arkansas Solid Waste Management Act".

**History.** Acts 1971, No. 237, § 1; A.S.A. 1947, § 82-2701.

### **RESEARCH REFERENCES**

**Ark. L. Rev.** Case Note, *Johnson v. Sunray Services, Inc.: Possible Solutions* to the NIMBY Syndrome, 45 *Ark. L. Rev.* 657.

### **CASE NOTES**

#### **ANALYSIS**

Adversely Affected.  
Construction With Other Laws.  
Statute of Limitations.

#### **Adversely Affected.**

Following an initial clean-up of certain soil contamination, although the state issued a letter indicating that no further action was necessary, a reasonable jury could find that the property owners were adversely affected, for purposes of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., by their lessee's violation of the Act where the property owners had to remove contamination to accommo-

date the needs of their new tenant. *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005).

#### **Construction With Other Laws.**

Pursuant to § 8-7-812, where the Arkansas Solid Waste Management Act, § 8-6-201 et seq., provides a remedy, that remedy does not conflict with the Regulated Substance Storage Tank Law, § 8-7-801 et seq., because such a remedy would be in addition to, not in conflict with, the regulations found in the storage tank law; the storage tank law does not provide the exclusive remedy for storage tanks leaks and does not supersede the Solid Waste Management Act absent a conflict. *Patton*

v. TPI Petroleum, Inc., 356 F. Supp. 2d 921 (E.D. Ark. 2005).

### **Statute of Limitations.**

Court denied summary judgment to the oil company, which was one of the defendants in an action by the landowners for damages from defendants' dumping, as the Arkansas Solid Waste Management Act (ASWMA), § 8-6-201 et seq., contained no limitations period; the court believed that it was doubtful that the Arkansas Legislature intended that a limitations period specifically limited to actions founded on contract or liability, as set forth in § 16-56-105(3), should operate

to reach out and limit the reach of the ASWMA. *Sewell v. Phillips Petro. Co.*, 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

District court's verdict was reversed on appeal where the applicable statute of limitations, § 16-56-105, began to run at the latest date the plaintiff lessor learned its land had suffered a remediable injury, though it did not yet know the extent of the injury. *Highland Indus. Park, Inc. v. BEI Def. Sys. Co.*, 357 F.3d 794 (8th Cir. 2004).

**Cited:** *Laidlaw Waste Sys. v. City of Ft. Smith*, 742 F. Supp. 540 (W.D. Ark. 1990); *Southeast Ark. Landfill, Inc. v. State*, 313 Ark. 669, 858 S.W.2d 665 (1993).

## **8-6-202. Purpose.**

It is the purpose of this subchapter and it is declared to be the policy of this state to regulate the collection and disposal of solid wastes in a manner that will:

- (1) Protect the public health and welfare;
- (2) Prevent water or air pollution;
- (3) Prevent the spread of disease and the creation of nuisances;
- (4) Conserve natural resources; and
- (5) Enhance the beauty and quality of the environment.

**History.** Acts 1971, No. 237, § 2; A.S.A. 1947, § 82-2702.

## **CASE NOTES**

**Cited:** *Arkansas Comm'n on Pollution Control & Ecology v. Land Developers, Inc.*, 284 Ark. 179, 680 S.W.2d 909 (1984); *Arkansas ex rel. Bryant v. Dow Chem. Co.*,

981 F. Supp. 1170 (E.D. Ark. 1997); *Sewell v. Phillips Petro. Co.*, 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

## **8-6-203. Definitions.**

As used in this subchapter:

(1) "Disposal site" means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method;

(2)(A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the Arkansas Department of Environmental Quality:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or



(ii) Pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, or disposed of, or otherwise improperly managed.

(B) "Hazardous waste" includes without limitation waste that is:

(i) Radioactive;

(ii) Toxic;

(iii) Corrosive;

(iv) Flammable;

(v) An irritant or a strong sensitizer; and

(vi) That generate pressure through decomposition, heat, or other means;

(3) "Household" means a single or multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground, and day-use recreation area;

(4)(A) "Household hazardous waste" means any hazardous waste derived from a household that is no longer under the control of the household.

(B) "Household hazardous waste" includes without limitation:

(i) Household cleaners;

(ii) Gasoline;

(iii) Paint, paint strippers, and paint thinners;

(iv) Motor oil; and

(v) Herbicides and pesticides, excluding antimicrobial and disinfectant products;

(5)(A) "Household hazardous waste storage or processing center" means a facility that stores, accumulates, or processes household hazardous waste.

(B) "Household hazardous waste storage or processing center" does not include:

(i) Hazardous waste treatment, storage, and disposal facilities permitted by the department under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.;

(ii) Agricultural operations as defined in § 8-6-509; or

(iii) De minimis amounts of household hazardous waste that have not been removed from the municipal solid waste stream;

(6) "Municipality" means a city of the first class, a city of the second class, or an incorporated town;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, municipal authority or trust, venture, or other legal entity, however organized;

(8)(A) "Pesticide" means a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant, or desiccant.

(B) "Pesticide" does not include:

(i) A new animal drug under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 §201(w);

(ii) An animal drug that has been determined by regulation of the Secretary of the United States Department of Health and Human Services not to be a new animal drug; or

(iii) An animal feed under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 §201(x);

(9) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-products material as defined by the Atomic Energy Act of 1954, 68 Stat. 923;

(10) "Solid waste board" or "board" means a regional solid waste planning board or a solid waste service area board, or its successor, created under § 8-6-701 et seq.;

(11) "Solid waste management system" means the entire process of source reduction, storage, collection, transportation, processing, waste minimization, recycling, and disposal of solid wastes by any person engaging in the process as a business or by any municipality, authority, trust, county, or by any combination of a municipality, authority, trust, or county; and

(12) "Transfer station" means a facility that is used to manage the removal, compaction, and transfer of solid waste from collection vehicles and other small vehicles to greater capacity transport vehicles.

**History.** Acts 1971, No. 237, § 3; A.S.A. 1947, § 82-2703; Acts 1991, No. 751, §§ 1, 2; 1995, No. 547, § 1; 1999, No. 1164, § 61; 2011, No. 1153, § 1.

**Amendments.** The 2011 amendment deleted former (1) and (2), inserted pres-

ent (2) through (5) and (8), and redesignated the remaining subdivisions accordingly.

**U.S. Code.** The Atomic Energy Act of 1954, referred to in this section, is codified primarily as 42 U.S.C. § 2011 et seq.

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions

to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

## CASE NOTES

### Authority of Commission.

The legislature intended both the Solid Waste Act and Hazardous Waste Act to allow the Arkansas Department of Pollution Control and Ecology (PC & E), within certain guidelines, to determine what sub-

stances are permitted under those acts, and a decision by the PC & E permitting a category of waste not defined in any of the acts was not an abuse of discretion. Bryant v. Mathis, 310 Ark. 737, 839 S.W.2d 528 (1992).

**8-6-204. Criminal, civil, and administrative penalties.****(a) CRIMINAL PENALTIES.**

(1)(A) Any person who violates any provision of this subchapter, who commits any unlawful act under it, or who violates any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality shall be guilty of a misdemeanor.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be illegal for a person to:

(i) Violate any provision of this subchapter, commit any unlawful act under it, or violate any rule, regulation, or order of the commission or department, and leave the state or remove his or her person from the jurisdiction of this state;

(ii) Through the course of activities prohibited by this section, purposely, knowingly, or recklessly cause pollution of the waters or air of the state in a manner not otherwise permitted by law and thereby create a substantial likelihood of adversely affecting human health, animal or plant life, or property; or

(iii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this chapter, or falsify, tamper with, or render inaccurate any monitoring device, testing method, or record required to be maintained under this chapter.

(B)(i) A person who violates subdivision (a)(2) of this section shall be guilty of a felony.

(ii) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3) Notwithstanding the limits on fines set in subdivisions (a)(1) and (2) of this section, if a person convicted under any of those subdivisions has derived or will derive pecuniary gain from commission of the offenses, then he or she may be sentenced to pay a fine not to exceed twice the amount of the pecuniary gain.

**(b) CIVIL PENALTIES.** The department is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, regulations, orders, permits, licenses, or plans issued pursuant to this subchapter;



(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant to this subchapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c) Any person who violates any provision of this subchapter and regulations, rules, permits, or plans issued pursuant to this subchapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. These administrative procedures may also be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including natural resource damages.

(d) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under any of those subsections has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(e)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited in the operating fund of the department.

(2) All moneys collected as civil penalties pursuant to this section shall be deposited in the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) The Director of the Arkansas Department of Environmental Quality, in his or her discretion, may authorize in-kind services or cash contributions as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the services, by arranging and providing financing for the services, or by other financial arrangements initiated by the department in which the violator and the department retain no monetary benefit, however remote.

(C) The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(4) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.

(f) The culpable mental states referenced throughout this section shall have the definitions set out in § 5-2-202.

(g) Solicitation or conspiracy, as defined by the Arkansas Criminal Code at § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-4-103 and 8-7-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.

(h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his or her activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(i) A business organization and its agents or officers may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

**History.** Acts 1971, No. 237, § 11; 1983, No. 666, § 3; A.S.A. 1947, § 82-2711; Acts 1987, No. 529, § 2; 1991, No. 1057, §§ 4, 5; 1993, No. 731, § 4; 1995, No. 547, § 2; 1995, No. 895, § 5; 1999, No. 582, § 1; 2005, No. 1824, § 6.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, subdivision (e)(3) of this section is set out above as amended by Acts 1995, No. 895, § 5. This subdivision was also amended by Acts 1995, No. 547, § 2, to read as follows:



“(e)(3)(A) The director, in his discretion, may accept in-kind services as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

“(B) The violator may provide in-kind services as directed by the department by utilizing the violator’s own expertise, by hiring and compensating subcontractors to perform the services, or by other financial arrangements in which the violator retains no monetary benefit, however remote.

“(C) The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.”

**Publisher’s Notes.** Acts 1991, No. 1057, § 1, provided: “The General Assembly finds and determines that the criminal and civil penalties imposed by current law do not accurately reflect the degree of concern which the state places upon its environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations

of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum necessary to receive federally delegated programs. In declaring itself “The Natural State,” the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent.”

Acts 1991, No. 1057, § 5, is also codified as §§ 8-4-103(g)-(j) and 8-7-204 (f)-(i).

Acts 1993, No. 731, § 1, provided: “The State of Arkansas has an abundance of environmental concerns which need research and study, as well as concerns which have an immediate remedy but are absent funds to facilitate their implementation. This amendment serves to clarify the existing use of inkind services as penalties, to include cash contributions for use in worthy environmental projects and to advance environmental interests.”

**Cross References.** Arkansas Criminal Code, § 5-1-101 et seq.

Penalties and procedures, § 8-6-902.

## CASE NOTES

### ANALYSIS

Liability.  
Statute of Limitations.

#### Liability.

Anyone who disposes of, transports, processes or abandons waste in a manner or place likely to cause water or air pollution, is liable to the state for costs, expenses and damages, including natural resource damages. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

#### Statute of Limitations.

Court denied summary judgment to the oil company, which was one of the defen-

dants in an action by the landowners for damages from defendants’ dumping, as the Arkansas Solid Waste Management Act (ASWMA), § 8-6-201 et seq., contained no limitations period; the court believed that it was doubtful that the Arkansas Legislature intended that a limitations period specifically limited to actions founded on contract or liability, as set forth in § 16-56-105(3), should operate to reach out and limit the reach of the ASWMA. Sewell v. Phillips Petro. Co., 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

## 8-6-205. Illegal actions — Rebuttable presumption — Acts or omissions by third party.

(a) It shall be illegal for any person:

(1) To violate any provision of this subchapter or any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission issued pursuant to this subchapter or of a permit issued under this subchapter by the Arkansas Department of Environmental Quality;



(2) To construct, install, alter, modify, use, or operate any solid waste processing or disposal facility or disposal site without a permit from the department;

(3) To dispose of solid wastes at any disposal site or facility other than a disposal site or facility for which a permit has been issued by the department. However, no provision of this subchapter shall be construed so as to prevent an individual from disposing of solid wastes resulting from his or her own household activities on his or her own land if the disposal does not create a public or private nuisance or a hazard to health and does not violate a city ordinance or other law and does not involve the open dumping of garbage;

(4) To dump, deposit, throw, or in any manner leave or abandon any solid wastes, including, but not limited to, garbage, tin cans, bottles, rubbish, refuse, or trash upon property owned by another person without the written permission of the owner or occupant of the property or upon any public highway, street, road, public park or recreation area, or any other public property except as designated for disposal of waste; or

(5) To sort, collect, transport, process, or dispose of solid waste contrary to the rules, regulations, or orders of the department or in such a manner or place as to create or be likely to create a public nuisance or a public health hazard or to cause or be likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

(b) There is created a rebuttable presumption that shall arise in any administrative, civil, or criminal action under this subchapter to the effect that, if it can be proved that one (1) or more items of solid waste bear the name or names of one (1) or more persons in such a form as to indicate that the person or persons were the owners of those items and those items were unlawfully disposed of, then the person or persons are presumed to have committed the unlawful act of disposal.

(c) No person shall be liable for any violation of this subchapter or of any rule, regulation, or order of the commission issued pursuant to this subchapter if the violation results solely from the act or omission of a third party, unless the person has knowingly allowed the violation to occur through acquiescence, acts, or omissions.

**History.** Acts 1971, No. 237, § 10; 1983, No. 666, § 2; A.S.A. 1947, § 82-2710; Acts 1987, No. 730, § 1; 1989, No. 260, § 2; 1995, No. 547, § 3; 1997, No. 1206, § 1; 2001, No. 1069, § 1; 2009, No. 1199, § 6.

**Amendments.** The 2009 amendment substituted “or omissions” for “and/or omissions” at the end of (c).

**Cross References.** Theft of recyclable materials, § 5-36-121.

## CASE NOTES

## ANALYSIS

Jury Instructions.  
Liability.

**Jury Instructions.**

The trial court erroneously instructed the jury that the alternative violations in subdivisions (a)(3)-(5) were not separate offenses but alternative means of committing one offense, while the state's charge tracked only the language set out in subdivision (a)(4); thus, there was no way to know whether the jury found defendant guilty of disposal without a permit (subdivision (a)(3)), disposal of waste on another's property (subdivision (a)(4)), or creating a public nuisance, hazard, or polluted condition (subdivision (a)(5)). *Renfro v. State*, 331 Ark. 253, 962 S.W.2d 745 (1998).

**Liability.**

Anyone who disposes of, transports, processes or abandons waste in a manner or place likely to cause water or air pollution, is liable to the State for costs, expenses and damages, including natural resource damages. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

**Cited:** *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005).

**8-6-206. Private right of action.**

Any person adversely affected by a violation of this subchapter or of any rules, regulations, or orders issued pursuant thereto shall have a private right of action for relief against the violation.

**History.** Acts 1971, No. 237, § 12;  
A.S.A. 1947, § 82-2712.

## CASE NOTES

## ANALYSIS

Available Relief.  
Statute of Limitations.

**Available Relief.**

Private rights of action under the Arkansas Solid Waste Management Act, § 8-6-206, are not limited to seeking injunctive relief to the exclusion of damages. *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005).

**Statute of Limitations.**

Court denied summary judgment to the oil company, which was one of the defendants in an action by the landowners for damages from defendants' dumping, as the Arkansas Solid Waste Management Act (ASWMA), § 8-6-201 et seq., contained no limitations period; the court believed that it was doubtful that the Arkansas Legislature intended that a limitations period specifically limited to actions founded on contract or liability, as set forth in § 16-56-105(3), should operate to reach out and limit the reach of the ASWMA. *Sewell v. Phillips Petro. Co.*, 197 F. Supp. 2d 1160 (W.D. Ark. 2002).

**8-6-207. Powers and duties of the department and commission generally.**

(a) The Arkansas Department of Environmental Quality or its successor shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations relating to solid waste disposal;

(2) To advise, consult, and cooperate with appropriate federal, state, interstate, and local units of government and with affected groups and

industries in the formation of plans and the implementation of a solid waste management program pursuant to this subchapter;

(3) To accept and administer loans and grants from the federal government and from such other sources as may be available to the Arkansas Pollution Control and Ecology Commission for the planning, construction, and operation of solid waste management systems and disposal facilities;

(4) To develop a statewide solid waste management plan in cooperation with municipal and county governments and solid waste boards which gives emphasis to regional planning, where feasible;

(5) To require to be submitted and to approve plans and specifications for the construction and operation of solid waste disposal facilities and sites and to inspect the construction and operation thereof;

(6) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of solid waste management systems, disposal sites, and facilities;

(7) To make investigations, inspections, and to hold such hearings, after notice, as it may deem necessary or advisable for the discharge of duties under this subchapter and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto;

(8) To make, issue, modify, revoke, and enforce orders, after notice and opportunity for adjudicatory review by the commission, prohibiting violation of any of the provisions of this subchapter or of any rules and regulations issued pursuant to it, and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(9) To institute proceedings in the name of the department in any court of competent jurisdiction to compel compliance with and to restrain violation of the provisions of this subchapter or any rules, regulations, and orders issued pursuant thereto and to require the taking of such remedial measures for solid waste disposal as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(10) To initiate, conduct, and support research, demonstration projects, and investigations and to coordinate with all state agency research programs pertaining to solid waste disposal and management systems;

(11) To make periodic inspections not less than quarterly in accordance with regulations promulgated by the commission of all solid waste disposal facilities or sites permitted under this subchapter to ensure compliance with all requirements of this subchapter and the regulations promulgated under this subchapter and to make a final inspection of closed or abandoned solid waste disposal sites to determine compliance with rules and regulations for proper closure and proper filling and drainage of the site;



(12) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of transfer stations;

(13) To regulate and license persons engaged in the business of transporting used and waste tires;

(14) To establish minimum standards for the operation of a solid waste collection system; and

(15) Upon the petition of a solid waste board or upon its own initiative to revoke, modify, or deny a permit for a solid waste disposal facility or a permit for any other element of a solid waste management system based upon noncompliance with an approved regional solid waste management plan of a solid waste board.

(b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1)(A) Promulgation of rules and regulations implementing the substantive statutes charged to the Arkansas Department of Environmental Quality for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law which the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor;

(8) Upon a majority vote, initiate review of any director's decision;

(9) To establish policies and standards for effective solid waste disposal and management systems; and

(10) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations for the source reduction, minimization, recycling, collection, transportation, processing, storage, and disposal of solid wastes, including, but not limited to, the disposal site location and the construction, operation, and maintenance of the disposal site or disposal process as necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the commission under this subchapter.

**History.** Acts 1971, No. 237, § 7; 1983, 1991, No. 751, § 3; 1997, No. 1219, § 8; No. 667, § 1; A.S.A. 1947, § 82-2707; Acts 1999, No. 1164, § 62.

### RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, Johnson v. to the NIMBY Syndrome, 45 Ark. L. Rev. Sunray Services, Inc.: Possible Solutions 657.

### CASE NOTES

**Cited:** United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

### 8-6-208. Existing rules, regulations, etc.

(a) All existing rules and regulations of the Arkansas Pollution Control and Ecology Commission relating to subjects embraced within this subchapter shall remain in full force and effect until expressly repealed, amended, or superseded by the commission.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the commission relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the commission under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this subchapter. Nothing in this subchapter shall be construed to limit or supersede the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or any action taken by the commission under it.

**History.** Acts 1971, No. 237, § 12;  
A.S.A. 1947, § 82-2712.

### CASE NOTES

**Cited:** Bryant v. Mathis, 310 Ark. 737, 839 S.W.2d 528 (1992); Romine v. Arkansas Dep't of Env'tl. Quality, 342 Ark. 380, 40 S.W.3d 731 (2000).

### 8-6-209. Local standards.

(a)(1) No municipality or county may, by ordinance, resolution, order, or otherwise, adopt standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities that are more restrictive than those adopted by, under, or pursuant to this subchapter or any and all applicable laws, rules, regulations, or orders adopted by state law or incorporated by reference from federal law, the Arkansas Pollution Control and Ecology Commission under the provisions of this subchapter, or the regional solid waste management boards or districts, unless there exists a fully implemented comprehensive area-wide zoning plan, and corresponding laws or ordinances, covering the entire municipality or county.

(2) Municipal or county ordinances, resolutions, or orders effective as of the date of the passage of this act and more restrictive than regional or state standards shall remain in full force and effect for a period of six (6) months following the date of the passage of this act.

(3) Provided, also, that if a county or municipality adopts a comprehensive area-wide zoning plan and corresponding laws and ordinances covering the entire county or city as referred to in § 8-6-212(e), the county or city may incorporate existing ordinances, resolutions, or orders in that plan.

(4) Otherwise, any and all such standards adopted by a municipality or county must be consistent with, in accordance with, and not more restrictive than said federal, state, and regional laws, rules, regulations, and orders. Any and all such municipalities or county ordinances, resolutions, orders, or standards contrary to this section shall be null, void, and repealed.

(b)(1) Subsection (a) of this section shall not apply if a municipality or county, by resolution, requests that the regional solid waste management board or district for its region adopt a more restrictive rule, regulation, order, or standard and such board or district either fails to hold a public hearing on the request within sixty (60) days of the request, or, after such public hearing, fails to take any action on the request within ninety (90) days of receipt of the request.

(2) If the board or district takes action on the request by approving, modifying, or denying the request within ninety (90) days of its receipt, the municipality or county shall be precluded from adopting and enforcing any more restrictive rule, regulation, order, or standard under subsection (a) of this section.



**History.** Acts 1971, No. 237, § 12; A.S.A. 1947, § 82-2712; Acts 1993, No. 1280, § 2.

**Publisher's Notes.** Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste Management Boards were established from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities which could not muster the resources for environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

"(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid

Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

"(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act 237 of 1971, Arkansas Code Annotated § 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste disposal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Control and Ecology Commission.

"(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning."

In reference to the term "date of passage of this act," Acts 1993, No. 1280 was signed by the Governor on April 21, 1993, and became effective from and after its passage and approval.

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions

to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

## CASE NOTES

### ANALYSIS

Construction.  
Adoption of Additional Standards.  
Landfill Location.  
Ordinance Upheld.

### Construction.

There was no repeal of this section due to a direct conflict with inconsistent provisions in Act 870 of 1989 and Act 752 of 1991, for this section can be harmonized with the existing Solid Waste Manage-

ment Act, in that, while regional boards are authorized to issue landfill permits under the Act, this does not preclude local governments from adopting additional landfill standards. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

#### **Adoption of Additional Standards.**

Neither Act 870 of 1989 nor Act 752 of 1991, now codified at § 8-6-201 et seq., expressly repealed the counties' authority to adopt more stringent landfill standards under this section. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

#### **Landfill Location.**

The Planning Board does have authority to prepare a zoning ordinance for the

county, but that is not exclusive authority which divests the quorum court of its power to adopt standards for the location of landfill sites. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

#### **Ordinance Upheld.**

Quorum court correctly found that there was a rational relationship between the ordinance which endorsed a two-mile buffer zone and the protection of main water sources and pollution containment. *Johnson v. Sunray Servs., Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

### **8-6-210. Agreements authorized.**

(a) Any two (2) or more municipalities, counties, or other public agencies may enter into agreements with one another for joint or cooperative action pursuant to a solid waste management system.

(b) Any agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition, and nature of any separate legal or administrative entity created by the agreement, together with the powers delegated thereto, provided that the entity may be legally created;

(3) Its purpose;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget, provided that the legal entity may incur indebtedness for the lease or purchase of land, equipment, and other expenses necessary to the operation of a solid waste management system, or any part of it;

(5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon the partial or complete termination; and

(6) Any other necessary and proper matters.

**History.** Acts 1971, No. 237, § 4; A.S.A. 1947, § 82-2704.

### **8-6-211. Municipal solid waste management systems.**

(a) All municipalities shall provide a solid waste management system which will adequately provide for the collection and disposal of all solid wastes generated or existing within the incorporated limits of the municipality or in the area to be served and in accordance with the rules, regulations, and orders of the Arkansas Pollution Control and Ecology Commission. The governing body of the municipality may enter

into agreements with one (1) or more other municipalities, counties, a regional solid waste management district, private persons or trusts, or with any combination thereof, to provide a solid waste management system, or any part of a system, for the municipality, but the agreement shall not relieve the parties of their responsibilities under this subchapter.

(b)(1) The governing body of the municipality shall have the authority to levy and collect such fees and charges and require such licenses as may be appropriate to discharge its responsibility under this subchapter, and the fees, charges, and licenses shall be based on a fee schedule as set forth in an ordinance.

(2)(A) Without limitation on otherwise appropriate collection procedures, a municipality may collect its fees and service charges through either its own system of periodic billing or by entering the fees and service charges on the tax records of the county and then collecting the fees and service charges with the personal property taxes on an annual basis.

(B) Further, any fees and service charges billed periodically by the cities which are more than ninety (90) days delinquent on November 1 of each year may be entered on the tax records of the county as a delinquent periodic fee or service charge and may be collected by the county with personal property taxes.

(3)(A)(i) In counties where the fees are entered on the tax records for yearly collection or if the periodic fees and service charges are more than ninety (90) days delinquent as of November 1, the fees and service charges shall be entered on the tax records of the county by the county clerk and shall be collected by the county collector with the personal property taxes.

(ii) The fees and service charges to be collected shall be certified to the county clerk by December 1 each year by an appropriate municipal official or the mayor.

(iii) No county collector of taxes shall accept payment of any property taxes where annual fees and service charges or delinquent periodic fees and service charges appear on the county tax records of a taxpayer unless the fees and service charges due are also receipted.

(iv) These funds shall be receipted and deposited into an official account of the county collector, who shall settle the account at least quarterly.

(B) Annual fees and service charges or the delinquent periodic fees and service charges which remain unpaid after the time other property taxes are due shall constitute a lien on the real and personal property of the taxpayer which may be enforced against such property by an action in circuit court.

(C) The amount of any fees and service charges collected shall then be paid to the municipality by the collector, less four percent (4%) to be retained by the collector.

(D) In addition, where the collector maintains a separate tax book for these fees and charges, the collector may charge an additional two dollars and fifty cents (\$2.50) for collection.



(c) Municipalities may accept and disburse funds derived from grants from the federal or state governments, from private sources, or from moneys that may be appropriated from any available funds for the installation and operation of a solid waste management system or any part of a system.

(d) Municipalities are authorized to contract for the purchase of land, facilities, vehicles, and machinery necessary to the installation and operation of a solid waste management system either individually or as a party to a regional or county solid waste authority.

(e) The governing body of a municipality shall have the right to establish policies for and enact laws concerning all phases of the operation of a solid waste management system, including hours of operation, the character and kinds of wastes accepted at the disposal site, the separation of wastes according to type by those generating them prior to collection, the type of container for storage of wastes, the prohibition of the diverting of recyclable materials by persons other than the generator or collector of the recyclable material, the prohibition of burning of wastes, the pretreatment of wastes, and such other rules as may be necessary or appropriate, so long as the laws, policies, and rules are consistent with, in accordance with, and not more restrictive than those adopted by, under, or pursuant to this subchapter or any laws, rules, regulations, or orders adopted by state law or incorporated by reference from federal law, the commission, or the regional solid waste management boards or districts, unless:

(1) There exists a fully implemented comprehensive area-wide zoning plan and corresponding laws or ordinances covering the entire municipality; or

(2) The municipality has made a request to the regional solid waste management board or district to adopt a more restrictive rule, regulation, order, or standard and no public hearing has been held within sixty (60) days or the request has not been acted upon within ninety (90) days.

**History.** Acts 1971, No. 237, § 5; A.S.A. 1947, § 82-2705; Acts 1991, No. 1007, § 1; 1993, No. 1280, § 3; 1995, No. 547, § 4; 2001, No. 1720, § 2.

**Publisher's Notes.** Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste Management Boards were established

from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities which could not muster the resources for

environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

"(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

"(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act 237 of 1971, Arkansas Code Annotated

§ 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste disposal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Control and Ecology Commission.

"(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning."

**Cross References.** Theft of recyclable materials, § 5-36-121.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source Separation and Recycling of Solid Waste Act, 11 U. Ark. Little Rock L.J. 733.

Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

## CASE NOTES

### Fees.

The Arkansas County Quorum Court was not authorized by law in 1989 to collect a waste fee by imposing it as a surcharge on the personal property taxes the residents of the county must pay.

*Arkansas County v. Burris*, 308 Ark. 490, 825 S.W.2d 590 (1992).

**Cited:** *Laidlaw Waste Sys. v. City of Ft. Smith*, 742 F. Supp. 540 (W.D. Ark. 1990); *Snell v. State*, 290 Ark. 503, 721 S.W.2d 628 (1986).

## 8-6-212. County solid waste management systems.

(a)(1) Each county of the state is authorized to provide and shall provide a solid waste management system adequate to collect and dispose of all solid wastes generated or existing within the boundaries of the county and outside the corporate limits of any municipality in the county.

(2) By agreement or contractual arrangement, the county may assume responsibility for solid wastes generated within municipalities whether within its county or other counties.

(3) A county may enter into agreements with other counties, one (1) or more municipalities, a regional solid waste management district, governmental agencies, private persons, trusts, or with any combina-



tion thereof, to provide a solid waste management system for the county or any portion thereof, but the agreement shall not relieve the parties to the agreement of their responsibilities under this subchapter.

(b)(1)(A) A county government may levy and collect the fees and charges and require the licenses that are appropriate to discharge the county's responsibility for a solid waste management system or any portion thereof. Each fee, charge, and license shall be based on a fee schedule contained in an ordinance.

(B)(i) A county may provide by ordinance that responsibility for payment of the fees and charges rests on the occupant of the property.

(ii) The ordinance shall provide that the owner of the property is the occupant unless, before the fifth day of the month of service, the owner registers with the county the name and address of the tenant occupying the property and either the date that the lease is to expire or that the lease is month to month.

(2)(A)(i) A county government may collect its fees and service charges by using its own system of periodic billing or by entering the fees and service charges on the county tax records and then collecting the fees and service charges annually with the personal property taxes.

(ii)(a) If a tenant has been registered as an occupant under subdivision (b)(1)(B)(ii) of this section, then the tenant is responsible for paying the fees and charges, and the county may collect the fees and charges annually from the tenant's personal property taxes.

(b) The county may also assess an additional annual fee of ten percent (10%) for invoicing and collecting the delinquent fees and charges from the tenant rather than the owner.

(iii) If a tenant has not been registered as an occupant under subdivision (b)(1)(B)(ii) of this section, then the owner is responsible for paying the fees and charges, and the county may collect the fees and charges annually from the owner's personal property taxes or real property taxes.

(B) Further, a fee or service charge billed periodically by the county that is more than ninety (90) days delinquent or is delinquent as of the date set by the quorum court by ordinance may be entered on the tax records of the county as a delinquent periodic fee or service charge and may be collected by the county with personal property taxes or with real property taxes from the owner of the property in accordance with a county ordinance, except as provided in subdivision (b)(1)(B)(ii) of this section.

(C)(i) A county collector shall not accept payment of property taxes if an annual fee or service charge or a delinquent periodic fee or service charge appears on the county tax records of a taxpayer unless the fee or service charge due is also receipted.

(ii) These funds shall be receipted and deposited into an official account of the county collector, who shall settle the account at least quarterly.

(iii) The amount of the fees and service charges collected shall be paid to the county treasurer by the county collector, less four percent



(4%) to be retained by the county collector. In addition, when the county collector maintains a separate tax book for the fees and charges, the county collector may charge an additional two dollars and fifty cents (\$2.50) for collection.

(3)(A) In counties in which the fees are entered on the tax records for yearly collection or if the periodic fees and service charges are more than ninety (90) days delinquent or are delinquent as of the date set by the quorum court by ordinance, the fees and service charges shall be entered on the tax records of the county by the county clerk and shall be collected by the county collector with the personal property taxes or with real property taxes from the owner of the property in accordance with a county ordinance, except as provided in subdivision (b)(1)(B)(ii) of this section.

(B) The fees and service charges to be collected shall be certified to the county clerk by December 1 each year by an appropriate municipal official or the mayor.

(4) Annual fees and service charges or the delinquent periodic fees and service charges which remain unpaid after the time other property taxes are due shall constitute a lien on the real and personal property of the taxpayer which may be enforced against such property by an action in circuit court.

(c) A county may accept and disburse funds derived from federal or state grants, from private sources, or from moneys that may be appropriated from any available funds for the installation and operation of a solid waste management system or any part thereof.

(d) A county is authorized to contract for the lease or purchase of land, facilities, and vehicles for the operation of a solid waste management system either for the county or as a party to a regional solid waste authority.

(e) A county shall have the right to issue orders, to establish policies for, and to enact ordinances concerning all phases of the operation of a solid waste management system, including hours of operation, the character and kinds of wastes accepted at the disposal site, the separation of wastes according to type by those generating them prior to collection, the type of container for storage of wastes, the prohibition of the diverting of recyclable materials by persons other than the generator or collector of the recyclable materials, the prohibition of burning of wastes, the pretreatment of wastes, and such other rules as may be necessary or appropriate, so long as such orders, policies, and ordinances are consistent with, in accordance with, and not more restrictive than, those adopted by, under, or pursuant to this subchapter or any other laws, rules, regulations, or orders adopted by state law or incorporated by reference from federal law, the Arkansas Pollution Control and Ecology Commission, or the regional solid waste management boards or districts, unless:

(1) There exists a fully implemented comprehensive area-wide zoning plan and corresponding laws or ordinances covering the entire county; or

(2) The county has made a request to the regional solid waste management board or district to adopt a more restrictive rule, regulation, order, or standard and no public hearing has been held within sixty (60) days or the request has not been acted upon within ninety (90) days.

**History.** Acts 1971, No. 237, § 6; 1983, No. 612, § 1; 1985, No. 946, § 1; A.S.A. 1947, § 82-2706; Acts 1991, No. 1007, § 2; 1993, No. 1280, § 4; 1995, No. 547, § 5; 2001, No. 1720, § 3; 2005, No. 1272, § 1; 2011, No. 174, § 1.

**Publisher's Notes.** Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste Management Boards were established from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities which could not muster the resources for environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

"(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid

Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

"(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act 237 of 1971, Arkansas Code Annotated § 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste disposal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Control and Ecology Commission.

"(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning."

**Amendments.** The 2011 amendment rewrote (b)(1) and (2); and substituted "or are delinquent as of the date set by the quorum court by ordinance" for "as of November 1" in (b)(3).

**Cross References.** Theft of recyclable materials, § 5-36-121.

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

**U. Ark. Little Rock L.J.** Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source Separation and Recycling of Solid Waste

Act, 11 U. Ark. Little Rock L.J. 733.

Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2001 Arkansas General Assembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

### CASE NOTES

#### Fees.

The Arkansas County Quorum Court was not authorized by law in 1989 to collect a waste fee by imposing it as a surcharge on the personal property taxes

the residents of the county must pay. *Arkansas County v. Burris*, 308 Ark. 490, 825 S.W.2d 590 (1992).

**Cited:** *Arkansas County v. Burris*, 308 Ark. 490, 825 S.W.2d 590 (1992).

### 8-6-213. [Repealed.]

**Publisher's Notes.** This section, concerning permit procedure generally, was repealed by Acts 1995, No. 547, § 9. The section was derived from Acts 1971, No.

237, § 8; 1983, No. 916, § 1; 1985, No. 1022, § 1; A.S.A. 1947, § 82-2708; Acts 1989, No. 531, § 2; 1991, No. 454, § 2.

### 8-6-214. Records and examinations.

(a) The owner or operator of any permitted facility or site shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the Arkansas Department of Environmental Quality as the Director of the Arkansas Department of Environmental Quality may reasonably require.

(b) The department or any authorized employee or agent may examine and copy any books, papers, records, or memoranda pertaining to the operation of the facility or site.

(c) The department or any authorized employee or agent may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations necessary or appropriate for the purpose of this subchapter.

(d)(1)(A) Any records, reports, or information obtained under this subchapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(B) Upon a satisfactory showing to the director that the records, reports, permits, documentation, or information, or any part thereof, if made public, would divulge methods or processes entitled to protection as trade secrets, then the director shall consider, treat, and protect such records, reports, or information as confidential.

(2)(A) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing restriction of confidentiality to other officers, employees, or authorized representatives of this state or of the United States if the owner or operator of the facility to which the information pertains is informed at least two (2) weeks prior to the transmittal and if the information has been acquired by the department under the provisions of this subchapter.



(B) The provisions of subdivision (d)(2) of this section shall not be construed to limit the department's authority to release confidential information during emergency situations.

(3) Any violation of this subsection shall be unlawful and constitute a misdemeanor.

**History.** Acts 1971, No. 237, § 9; 1983, No. 666, § 1; A.S.A. 1947, § 82-2709; Acts 1999, No. 1164, § 63.

### **8-6-215 — 8-6-217. [Superseded.]**

**A.C.R.C. Notes.** These sections, concerning transfer of permits, financial responsibility, and denial of application for issuance, transfer, or modification of permit, are deemed to be superseded by § 8-

1-106, derived from Acts 1991, No. 454, § 1. These sections were derived from the following sources: 8-6-215. Acts 1989, No. 531, § 1.8-6-216. Acts 1989, No. 531, § 1.8-6-217. Acts 1989, No. 531, § 1.

### **8-6-218. [Repealed and superseded.]**

**Publisher's Notes.** This section, concerning limitations on the issuance of permits for new landfills, was repealed and superseded by Acts 1993, No. 1263, § 5.

The section was derived from Acts 1991, No. 993, § 1.

For present law, see § 8-6-1501 et seq.

### **8-6-219. Applicants for permits — Applicability.**

(a) An applicant for a new permit under this subchapter or the modification or transfer of a permit shall be a person, partnership, corporation, association, the State of Arkansas, a political subdivision of the state, an improvement district, a sanitation authority, or a solid waste board.

(b) This section shall not apply to permits for landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

(c) This section shall apply to permit applications submitted after July 15, 1991.

**History.** Acts 1991, No. 751, § 4.

### **8-6-220. Yard waste.**

(a)(1)(A) Except as provided in subdivision (a)(2) of this section, it is illegal for yard waste to be placed in a solid waste management facility solely for the purpose of disposal, except for fugitive amounts of yard waste.

(B) A permitted solid waste landfill may collect landfill gas from the fugitive amounts of yard waste for conversion to energy.

(2)(A) If authorized by the Arkansas Department of Environmental Quality through a permit modification process including a public notice and comment period, yard waste may be accepted by a

permitted solid waste landfill that operates a landfill gas-to-energy system for the recovery and use of landfill gas as a renewable energy fuel source.

(B) The department shall consider, at a minimum, the following before authorizing yard waste to be accepted by a solid waste landfill for disposal:

(i) The number and types of permitted compost facilities accepting yard waste within the service areas of the solid waste landfill;

(ii) The environmental impact of the proposed change in disposing of yard waste at a solid waste landfill instead of a permitted compost facility;

(iii) The financial impact to each permitted compost facility located within the service area of the solid waste landfill;

(iv) Whether the regional solid waste management board hosting the solid waste landfill and hosting a permitted compost facility within the landfill's service area supports the request;

(v) The amount of yard waste the solid waste landfill intends to accept and the basis for estimating the volume of yard waste to be disposed in the landfill;

(vi) The financial impact to residents and industry within the service area of the solid waste landfill;

(vii) The location of the solid waste landfill;

(viii) The location within the solid waste landfill for the placement of yard waste;

(ix) The plans to offset the effects of disposing of yard waste on the volume reduction for municipal waste disposal;

(x) A description and timeline for the landfill gas collected from the yard waste to become a renewable energy fuel source;

(xi) The design and efficiency of the landfill gas collection system;

(xii) A list of purchase power agreements that guarantee the collection and use of the landfill gas collected from the yard waste for energy conversion; and

(xiii) Other information as may be required by the department.

(C) Landfill gas recovered through the landfill gas-to-energy system shall be utilized for the generation of electricity or used as a substitute for conventional fuels.

(b)(1) In addition to composting requirements for regional solid waste management districts set forth in § 8-6-719, each district shall furnish yard waste reduction or usage and/or opportunities to ensure that its residents are provided with the availability to choose, based upon need by population or area, ways and means of usage, reduction, reuse, or composting of yard waste.

(2) Such choices of yard waste reduction or usage shall be submitted to the department for approval and shall become an integral part of the district's solid waste management plan.

(c) As used in this section:

(1) "Fugitive amounts of yard waste" means small quantities that escape the approved methods of usage, reduction, reuse, or composting of yard waste;

(2) "Landfill gas-to-energy system" means the process of collecting, storing, and converting landfill gas to electricity for a direct fuel use or other use as a substitute for conventional fuels, including without limitation flaring for system testing, system maintenance, or proving capacity for an intended energy use; and

(3) "Yard waste" means grass clippings, leaves, and shrubbery trimmings.

**History.** Acts 1991, No. 751, § 4; 1993, No. 479, § 3; 1995, No. 547, § 6; 2009, No. 1220, § 1.

**Amendments.** The 2009 amendment, in (a), inserted (a)(1)(B) and redesignated the existing text accordingly, substituted

"Except as provided in subdivision (a)(2) of this section" for "It is established by this section that" in (a)(1)(A), and inserted (a)(2); inserted (c)(2) and redesignated the subsequent subdivision accordingly; and made related and minor stylistic changes.

### CASE NOTES

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep't of Pollution Con-

trol & Ecology, 137 B.R. 735 (E.D. Ark. 1992).

### 8-6-221. Review of rules and regulations.

All rules and regulations adopted under this subchapter shall be reviewed by the interim House Committee on Public Health, Welfare, and Labor and interim Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

**History.** Acts 1991, No. 751, § 4; 1997, No. 179, § 3.

### 8-6-222. Standards for sites and facilities.

Regional solid waste management boards may adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than the state or federal governments.

**History.** Acts 1993, No. 1280, § 5.

**A.C.R.C. Notes.** References to "this chapter" in subchapters 5 and 8-10 may not apply to this section which was enacted subsequently.

**Publisher's Notes.** Acts 1993, No. 1280, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of January 1, 1993, the capacity in Arkansas was about four and one-half (4½) years of landfill life for fifty-seven (57) municipal solid waste landfills;

"(3) By the enactment of Arkansas Act 752 of 1991, the Regional Solid Waste

Management Boards were established from the preceding Regional Solid Waste Boards and said Regional Solid Waste Boards were given additional powers and duties.

"(4) The stated purpose for the enactment of Arkansas Act 752 of 1991 was to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. It was found that the preexisting system of relying upon solid waste management by individual counties and municipalities had fostered conditions in which certain areas of the state were facing capacity shortages of crises proportions, while others experienced a surfeit of capacity with individual disposal facilities



which could not muster the resources for environmentally responsible operations. Despite the efforts of the Regional Solid Waste Management Boards to date, those conditions remain true at this time.

“(5) Upon enacting Arkansas Act 752 of 1991 establishing the Regional Solid Waste Management Boards and providing for their powers and duties, the Seventy-eighth Arkansas General Assembly authorized the districts to issue rules and regulations which are consistent with and in accordance with, but no more restrictive than, all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

“(6) Despite the limitation that rules and regulations of the districts be consistent with and in accordance with, but no more restrictive than, the applicable state and federal law, pursuant to Arkansas Act

237 of 1971, Arkansas Code Annotated § 8-6-209 (Repl.1991), counties and municipalities retain the authority to adopt standards, by ordinance, resolution, or order, for the location, design, construction and maintenance of solid waste disposal sites and facilities, that are more restrictive than those adopted by state law and by the Arkansas Pollution Control and Ecology Commission.

“(7) This authority vested in counties and municipalities has led in large part to the disparate environmental and economic concerns set out in Arkansas Act 752 of 1991 and summarized above and could thwart and jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state’s environmental quality by establishing regional solid waste management and planning.”

### **8-6-223. Household hazardous waste storage or processing centers — Permit required.**

(a) It is unlawful for a person to own or operate a household hazardous waste storage or processing center, as defined in § 8-6-203, without first obtaining from the Arkansas Department of Environmental Quality a transfer station permit or another permit that the department deems appropriate and that meets the requirements of this section.

(b)(1) The department shall not issue, modify, or renew a permit for a household hazardous waste storage or processing center regulated under this section without the permit applicant’s first demonstrating to the department’s satisfaction the applicant’s financial ability to ensure proper removal and disposal of household hazardous waste located at the household hazardous waste storage or processing center under this section.

(2) The amount of financial assurance required under this section shall be equal to or greater than one hundred fifty percent (150%) of a third party’s cost of disposal of the maximum permitted amount of household hazardous waste at a facility permitted under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., for the treatment, storage, and disposal of hazardous waste.

(3) A detailed disposal estimate under this section shall be prepared by an independent professional consultant.

(c) The permittee or applicant shall demonstrate financial ability to ensure proper removal and disposal of the household hazardous waste at its household hazardous waste storage or processing center by:

(1) Obtaining insurance that specifically covers the costs of disposal as required by this section;

(2) Obtaining a letter of credit;

(3) Obtaining a bond or other surety instrument;  
(4) Creating a trust fund or escrow account;  
(5) Combining any of the instruments in subdivisions (c)(1)-(4) of this section; or

(6) Any other financial instrument approved by the Director of the Arkansas Department of Environmental Quality.

(d) A financial instrument required by this section shall:

(1) Be posted to the benefit of the department;

(2) Provide that the financial instrument cannot be cancelled without sixty (60) days' prior written notice addressed to the department's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(3) Be reviewed by the department upon receipt of the cancellation notice to determine whether the department should initiate procedures to revoke or suspend the household hazardous waste storage or processing center's permit and whether the department should take possession of the funds guaranteed by the financial assurance mechanism.

(e) Before the department may release a financial assurance mechanism, the department shall inspect the household hazardous waste storage or processing center to determine to the department's satisfaction that no household hazardous waste is located at the household hazardous waste storage or processing center.

(f) The department is not responsible for the removal or disposal of household hazardous waste regulated under this section.

(g) Before an application for a permit is submitted to the department, a household hazardous waste storage or processing center shall apply for a certificate of need from the regional solid waste management board that has jurisdiction over the proposed site and shall follow the procedures and rules established under § 8-6-708.

(h) A household hazardous waste storage or processing center shall submit a permit application to the department within ninety (90) days of the approval of the certificate of need.

(i) If a certificate of need is not approved under subsection (j) of this section or a final determination is made by the department denying the permit application, the household hazardous waste storage or processing center shall cease all collection, storage, or processing activity and properly dispose of or recycle all materials within ninety (90) days.

(j) By October 1, 2011, each household hazardous waste storage or processing center operating before July 27, 2011 shall:

(1) Submit to the department a plan to remove and dispose of all household hazardous waste located at the household hazardous waste storage or processing center in accordance with this section;

(2) Submit to the department a detailed cost estimate to remove and dispose of the household hazardous waste located at the household hazardous waste storage or processing center that meets the requirements of this section and is approved by the department; and

(3) Obtain financial assurance in accordance with subdivision (b)(2) of this section.

(k) A household hazardous waste storage or processing center that is operating before July 27, 2011 is exempt from obtaining a certificate of need under subsection (g) of this section.

(l) A permit under this section is not required for recyclable materials collection centers or systems that are provided by a city, county, solid waste district, or regional solid waste management district that stores household hazardous waste in quantities of less than one hundred ten gallons (110 gal.) of each household hazardous waste, not to exceed an accumulated waste amount of five thousand gallons (5,000 gal.) of liquid waste or ten thousand pounds (10,000 lbs.) of nonliquid waste.

**History.** Acts 2011, No. 1153, § 2.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 5 and 8-10 may

not apply to this section which was enacted subsequently.

### SUBCHAPTER 3 — COUNTY SOLID WASTE MANAGEMENT SYSTEM AID FUND

#### SECTION.

8-6-301. Definitions.

8-6-302. County Solid Waste Management System Aid Fund.

8-6-303. Allocation of funds to counties — Distribution formula.

#### SECTION.

8-6-304. Eligibility to receive funds.

8-6-305. Failure to use funds — Misuse of funds.

8-6-306. Reapportionment of funds.

8-6-307. Transfer of funds — Exemption.

**Effective Dates.** Acts 1985 (1st Ex. Sess.), No. 5, § 3: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the Seventy-Fifth General Assembly, meeting in Extraordinary Session, that various appropriations enacted by the General Assembly could have the effect of placing the Constitutional and Fiscal Agencies Fund in an unsound financial condition and that the mechanism provided for in this act will help to alleviate such conditions and maintain the financial integrity of the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985.”

Acts 1985, No. 986, § 6: July 1, 1985.

Acts 1987, No. 551, § 4: Apr. 2, 1987. Emergency clause provided: “It is hereby

found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that previous General Assemblies have provided appropriations for the projects enumerated in this Act; that certain appropriations will expire before the adjournment of the Regular Session; and that if such appropriations expire, the programs authorized by such appropriations would cease, thereby depriving the citizens of the State of the benefits to be derived from such projects. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

### 8-6-301. Definitions.

As used in this subchapter, unless the context otherwise requires:



(1) "County solid waste collection and disposal system" or "county solid waste management system" means and includes either of the following:

(A) A county owned and operated solid waste management and disposal system funded by moneys appropriated by the quorum court;

(B) A municipally owned and operated solid waste management and disposal system located within the county or adjoining counties operated under contract with the county whereby the county is provided access thereto, and the quorum court appropriates funds to defray the county's share of the cost of operating the facility;

(C) A privately owned solid waste management and disposal system located within the county or an adjoining county in which the county has entered into a contract providing access and services of the facilities for the use and benefit of the county under the terms of which the county's share of the operating cost is funded by an appropriation made by the quorum court of the county; or

(D) A solid waste collection and disposal system operated by two (2) or more counties or by one (1) or more counties and one (1) or more municipalities or operated by a private owner under a compact or agreement whereby each of the participating counties and municipalities has access to the facilities of the system and appropriates, through its governing body, funds to defray their respective shares of the cost of such facility;

(2) "Solid waste management system" means the entire process of storage, collection, transportation, processing, treatment, and disposal of solid waste.

**History.** Acts 1985, No. 986, § 1; A.S.A. 1947, § 13-564.

### **8-6-302. County Solid Waste Management System Aid Fund.**

There is established in the State Treasury a fund to be known as the "County Solid Waste Management System Aid Fund", to consist of such special or general revenues or other moneys that may be deposited therein as provided by the General Assembly, to be used for the purpose of providing financial assistance to counties in the manner provided in this subchapter and for the establishment, expansion, maintenance, and operation of county solid waste collection and disposal systems.

**History.** Acts 1985, No. 986, § 1; A.S.A. 1947, § 13-564.

### **8-6-303. Allocation of funds to counties — Distribution formula.**

All of the general revenues and special revenues and other funds deposited in the County Solid Waste Management System Aid Fund during each fiscal year shall be allocated by the Treasurer of State to each of the several counties in the state. The fund shall be distributed to such counties only as provided in this subchapter, on the basis of

seventy-five percent (75%) divided equally among the seventy-five (75) counties of the state and twenty-five percent (25%) on the basis of population according to the most recent federal decennial census, with each county to receive an allocation thereof in the proportion that its population bears to the total population of the state.

**History.** Acts 1985, No. 986, § 2; A.S.A. 1947, § 13-565.

#### **8-6-304. Eligibility to receive funds.**

Before any county shall be eligible to receive its portion of the moneys in the County Solid Waste Management System Aid Fund during any fiscal year, the county, on or before the first day of the fiscal year, shall furnish the Treasurer of State the following information on forms to be developed by the Treasurer of State proof that:

(1) The county operates or is in the process of establishing a solid waste management system for that county and that the solid waste management system is available to serve the residents of the county and may be available for service to various cities and towns within the counties through interlocal agreements, compacts, or authorities;

(2) The quorum court of the county has established and approved a budget for the operation of the county solid waste management system for the fiscal year and has appropriated funds therefor in an amount sufficient to support not less than fifty percent (50%) of the costs of operating the solid waste management system. The funds appropriated therefor will be used solely for the cost of establishing, operating, and maintaining the solid waste system, for the hiring of personnel, and for the acquisition of equipment and land required to operate the solid waste management system and disposal; and

(3) The amount of funds allocated to the county for such year under this subchapter will be used exclusively for establishing, operating, and maintaining the solid waste management system and meeting the requirements of this subchapter, including the acquisition of land and the acquisition, maintenance, repair, and operation of equipment used in connection with the operation of the solid waste management system.

**History.** Acts 1985, No. 986, § 3; A.S.A. 1947, § 13-566.

#### **8-6-305. Failure to use funds — Misuse of funds.**

If any county fails during any fiscal year to expend an amount of county funds equal to at least fifty percent (50%) of the cost of operating its solid waste management system or uses any of the state funds allocated thereof under the provisions of this subchapter for any purpose other than as intended by this subchapter, then the county shall be ineligible to receive moneys during the next following fiscal year from the County Solid Waste Management System Aid Fund, but

may make reapplication for state assistance funds during the year next following thereafter, upon offering the appropriate assurances in writing that the county will meet the full requirements of the intent and purposes of this subchapter in the use of the funds.

**History.** Acts 1985, No. 986, § 3; A.S.A. 1947, § 13-566.

### **8-6-306. Reapportionment of funds.**

If any county fails to qualify for its proportionate share of the moneys in the County Solid Waste Management System Aid Fund during any fiscal year, then the moneys shall be reapportioned among the various counties which qualify to receive their proportionate share of the County Solid Waste Management System Aid Fund moneys during the fiscal year, in accordance with the distribution formula set forth in § 8-6-303. The Treasurer of State shall monthly distribute moneys to the eligible counties as authorized in this subchapter in the same manner as other county aid funds are distributed. The moneys shall be credited and used solely for the support and operation of the county solid waste management system.

**History.** Acts 1985, No. 986, § 4; 1985, (1st Ex. Sess.), No. 5, § 1; A.S.A. 1947, § 13-567.

### **8-6-307. Transfer of funds — Exemption.**

(a) The moneys saved from Acts 1985, No. 994, which reduced contributions made by the state for state employees who are employed by a state agency funded, in whole or in part, with general revenues, shall be set aside and implemented by the Chief Fiscal Officer of the State and the Treasurer of State in the amount and in accordance with procedures set forth in this section.

(b)(1) Beginning the month after the month in which such reductions in retirement contributions occur, the Chief Fiscal Officer of the State shall determine the amount of the general revenue savings, by fund or fund account, based upon the previous month's payroll deductions for retirement contributions to the Public Employees' Retirement System.

(2) During each fiscal year, the Chief Fiscal Officer of the State shall cause to be transferred on his books and those of the Treasurer of State the amount of the monthly general revenue savings from each affected fund or fund account to the Revenue Holding Fund Account before the close of business on the last day of each month until an aggregate of five million dollars (\$5,000,000) of general revenue savings during each fiscal year has been transferred to the Revenue Holding Fund Account from those sources, and monthly transfers of the general revenue savings to the Revenue Holding Fund Account shall cease for the remainder of that fiscal year.

(c) The Treasurer of State shall, after providing for the distribution of general revenues available for distribution, transfer the total amount



of such general revenue savings as certified to the Treasurer of State by the Chief Fiscal Officer of the State from the Revenue Holding Fund Account to the County Solid Waste Management System Aid Fund, to be used to make monthly distributions therefrom in the manner provided by law to the respective counties of this state to be used for the support of the county solid waste management system as provided in this subchapter.

(d) The Department of Correction is exempt from the provisions of this section.

**History.** Acts 1985, No. 986, § 4; 1985 (1st Ex. Sess.), No. 5, § 1; A.S.A. 1947, § 13-567; Acts 1987, No. 551, § 4.

**Publisher's Notes.** Acts 1985, No. 994, § 1, in part, reduced by two percent the employer contribution rates for the Ar-

kansas Public Employees Retirement System, State, County, Municipal and School Divisions, thereby making the contribution rate for each of these divisions 10 percent, nine percent, eight percent, and seven percent respectively.

## SUBCHAPTER 4 — LITTER CONTROL ACT

### SECTION.

- 8-6-401. Title.
- 8-6-402. Purpose.
- 8-6-403. Definitions.
- 8-6-404. Penalties.
- 8-6-405. Injunction.
- 8-6-406. Unlawful to litter — Exceptions.
- 8-6-407. Commercial refuse hauling by uncovered vehicles.
- 8-6-408. Discarding certain items prohibited.
- 8-6-409. Prima facie evidence against drivers.
- 8-6-410. Notice to the public required.
- 8-6-411. Litter receptacles.

### SECTION.

- 8-6-412. Enforcement generally.
- 8-6-413. Authority to take possession of discarded items — Notice.
- 8-6-414. Notification to motor vehicle owner and lienholders — Reclamation.
- 8-6-415. Sale of junk vehicles and discarded items.
- 8-6-416. Disposition of sale proceeds.
- 8-6-417. [Repealed.]
- 8-6-418. Possession or use of glass containers on navigable waterways.

**Effective Dates.** Acts 1977, No. 883, § 20: Mar. 30, 1977. Emergency clause provided: "It is hereby found and declared by the General Assembly that the present laws pertaining to litter control and junk motor vehicles are inadequate and the immediate passage of this act is necessary to remedy such situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, safety and welfare shall be in effect from and after the date of its passage and approval."

Acts 2005, No. 75, § 4: Feb. 7, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current resources are limited to enforce the Litter

Control Act; that this act authorizes illegal dumps control officers to issue citations for violations of the Litter Control Act; that this act clarifies the proper disposal of solid waste from illegal dumps; and that this act is immediately necessary to provide additional resources for the control of litter and the proper disposal of solid waste. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto.”

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### **8-6-401. Title.**

This subchapter shall be cited and known as the “Litter Control Act”.

**History.** Acts 1977, No. 883, § 1; A.S.A. 1947, § 82-3901.

### **8-6-402. Purpose.**

The purpose of this subchapter is to accomplish the control of litter, inoperative household appliances, and junk motor vehicles throughout the state by regulating their disposal. The intent of this subchapter is to add to existing litter control, removal, and enforcement efforts and not to terminate or supplant such efforts, as well as the compatible goal of improving the quality of life for all the citizens of Arkansas.

**History.** Acts 1977, No. 883, § 1; A.S.A. 1947, § 82-3901.

### **8-6-403. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) “Abandoned” means property to which no person claims or exercises right of ownership;

(2) “Automobile repair shop” means any business which engages in the repair or servicing of vehicles;

(3) “Commercial littering” includes, but is not limited to, littering done by commercial businesses and manufacturing companies of every kind and description, including those businesses and persons who illegally dispose of litter or solid waste for other persons in return for money, fees, or other compensation;

(4) “Demolisher” means any person whose business, to any extent or degree, is to convert a motor vehicle or household appliance into processed scrap or scrap metal, into saleable parts, or otherwise to wreck or dismantle vehicles or appliances;

(5) “Disposable package or container” means all items or materials designed or intended to contain another item or product, but not designed or intended for permanent or continued use;

(6) “Enclosed building” means a structure surrounded by walls or one (1) continuous wall and having a roof enclosing the entire structure and includes a permanent appendage to the structure;

(7) “Household appliance” includes, but is not limited to, refrigerators, freezers, ranges, stoves, automatic dishwashers, clothes washers, clothes dryers, trash compacters, television sets, radios, hot water heaters, air conditioning units, commodes and other plumbing fixtures, and bed springs or other furniture;

(8) "Inoperative household appliance" means a discarded household appliance which by reason of mechanical or physical defects can no longer be used for its intended purpose and which is not serving a functional purpose;

(9) "Junk motor vehicle" means any vehicle which is inoperable, dismantled, or damaged and that is unable to start and move under its own power. Vehicles are excluded as long as they are registered and bear a current license permit;

(10)(A) "Litter" means all waste material which has been discarded or otherwise disposed of as prohibited in this subchapter, including, but not limited to, convenience food and beverage packages or containers, trash, garbage, all other product packages or containers, and other postconsumer solid wastes.

(B) Litter does not include wastes from the primary processing of mining, logging, sawmilling, or farming, the raising of poultry, manufacturing, or wastes deposited in proper receptacles;

(11) "Old vehicle tire" means a pneumatic tire in which compressed air is designed to support a load, but which because of wear, damage, or defect can no longer safely be used on a motor vehicle and which is either not serving a functional purpose or use or is not in an enclosed building, a salvage yard, or the actual possession of a demolisher;

(12) "Public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests;

(13) "Salvage yard" means any business that, in the course of its operation, maintains ten (10) or more vehicles to be used, wholly or in parts, to generate revenue for the operation of the business; and

(14) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

**History.** Acts 1977, No. 883, § 2; A.S.A. 1947, § 82-3902.

#### **8-6-404. Penalties.**

(a)(1)(A)(i) A person convicted of a violation of § 8-6-406 or § 8-6-407 for a first offense shall be guilty of an unclassified misdemeanor and shall be fined in an amount of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).

(ii) An additional sentence of not more than eight (8) hours of community service shall be imposed under this subdivision (a)(1)(A).

(B)(i) A person convicted of a violation of § 8-6-406 or § 8-6-407 for a second or subsequent offense within three (3) years of the first offense shall be guilty of an unclassified misdemeanor and shall be fined in an amount of not less than two hundred dollars (\$200) and not more than two thousand dollars (\$2,000).



(ii) An additional sentence of not more than twenty-four (24) hours of community service may be imposed under this subdivision (a)(1)(B).

(2) In addition to those penalties, any violator may also be required to remove litter from alongside highways and at other appropriate locations for any prescribed period.

(b) Any person who violates § 8-6-406 or § 8-6-407 and who is found to have committed the prohibited acts in furtherance of or as a part of a commercial enterprise, whether or not that enterprise is the disposal of wastes, shall be guilty of commercial littering and shall be guilty of a Class A misdemeanor. Additionally, those convicted may be required to remove any litter disposed of in violation of this subchapter.

(c) Any person who violates any provision of § 8-6-408 shall be guilty of:

(1) An unclassified misdemeanor for a first offense and shall be fined one thousand dollars (\$1,000) and sentenced to one hundred (100) hours of community service; and

(2) A Class A misdemeanor for a second or subsequent offense.

(d)(1) All or any portion of the fines, community service, and imprisonment penalties provided by this section may be suspended by the judge if the violator agrees to remove litter from alongside highways and at other appropriate locations for a prescribed period.

(2) All fines collected under this section shall be deposited as follows:

(A) If a municipality or county where the offense occurs is a certified affiliate of Keep Arkansas Beautiful or Keep America Beautiful, Inc., and participates in litter control programs conducted by these organizations, then the moneys from fines collected for offenses in that jurisdiction shall be deposited, according to accounting procedures prescribed by law, into the city general fund or the county general fund to be used for the purpose of community improvement as determined by the municipal or county governing body; or

(B) If the municipality or county where the offense occurs is not a certified affiliate of Keep Arkansas Beautiful or Keep America Beautiful, Inc., or does not participate in litter-control programs conducted by these organizations, then the moneys from fines collected for offenses in those jurisdictions shall be remitted by the tenth day of each month to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration, on a form provided by that office, for deposit in the Keep Arkansas Beautiful Fund Account to be used by the Keep Arkansas Beautiful Commission, as appropriated by the General Assembly, for the purposes of encouraging litter prevention and antilitter education and increasing awareness of litter law enforcement statewide.

(e) In addition to all other penalties, any person convicted of a violation of § 8-6-406 or § 8-6-407 who fails to pay any fines assessed in accordance with the findings and orders of the court shall have his or her driver's license suspended for six (6) months by the Department of

Finance and Administration, upon receipt of an order of denial of driving privileges from the court pursuant to this section.

**History.** Acts 1977, No. 883, §§ 7, 11; 1981, No. 841, §§ 1, 2; A.S.A. 1947, §§ 82-3907, 82-3911; Acts 1993, No. 727, § 1; 1995, No. 979, § 1; 2001, No. 145, § 1; 2003, No. 1765, § 3; 2005, No. 646, § 1.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, this section is set out above as amended by Acts 1993, No. 727. This section was also amended by Acts 1993, No. 398, to read as follows:

“(a)(1) Every person who pleads guilty or nolo contendere or is found guilty of violating §§ 8-6-406 or 8-6-407 shall be punished as follows:

“(A) For a first offense, fined not less than two hundred fifty dollars (\$250) and not more than five hundred dollars (\$500);

“(B) For a second offense, fined not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000); and

“(C) In lieu of those penalties, any violator may be required to remove litter from alongside highways and at other appropriate locations for any prescribed period.

“(2) Any time any person supplies information to law enforcement officials which leads to the punishment of a person who violates this subchapter, the person giving such information is entitled to a reward of one-half (½) the amount imposed by the fine to the violator.

“(b)(1) Any person who violates §§ 8-6-406 or 8-6-407 and who is found to have committed the prohibited acts in further-

ance of or as a part of a commercial enterprise, whether or not that enterprise is the disposal of wastes, shall be guilty of commercial littering and shall be guilty of a misdemeanor.

“(2) He shall be punished by a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

“(3) Additionally, those convicted may be required to remove any litter disposed of in violation of this subchapter.

“(c)(1) Every person who pleads guilty or nolo contendere or is found guilty of violating any provision of § 8-6-408 shall be punished as follows:

“(A) For a first time offense, fined not less than two hundred and fifty dollars (\$250) and not more than five hundred dollars (\$500).

“(B) For a second time offense, fined not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

“(C) Additionally, those convicted may also be required to remove any litter disposed of in violation of this subchapter.

“(2) Any time any person supplies information to law enforcement officials which leads to the punishment of a person who violates this section, the person giving such information is entitled to a reward of one-half (½) the amount imposed by the fine to the violator.”

**Cross References.** Sentence to imprisonment or fine, §§ 5-4-201, 5-4-401.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General As-

sembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

## 8-6-405. Injunction.

In addition to all other remedies provided by this subchapter, the Arkansas Department of Environmental Quality, the Attorney General of this state, the prosecuting attorney of a county where any violation of any provision of this subchapter occurs, or any citizen, resident, or taxpayer of the county where a violation of any provision of this subchapter occurs may apply to the circuit court or the judge in vacation of the county where the alleged violation occurred for an injunction to restrain, prevent, or abate the maintenance and storage of

litter, junk motor vehicles, old vehicle tires, or inoperative or discarded household appliances in violation of any provision of this subchapter.

**History.** Acts 1977, No. 883, § 16; A.S.A. 1947, § 82-3916; Acts 1991, No. 516, § 1; 1999, No. 1164, § 64.

#### **8-6-406. Unlawful to litter — Exceptions.**

It shall be unlawful to drop, deposit, discard, or otherwise dispose of litter upon any public or private property in this state or upon or into any river, lake, pond, or other stream or body of water within this state, unless:

(1) The property has been designated by the Arkansas Department of Environmental Quality as a permitted disposal site;

(2) The litter is placed into a receptacle intended by the owner or tenant in lawful possession of that property for the deposit of litter, if it is deposited in such a manner as to prevent the litter from being carried away or deposited by the elements upon any part of the private or public property or waters; or

(3)(A) The person is the owner or tenant in lawful possession of the property and the litter remains upon the property and the act does not create a public health or safety hazard, a public nuisance, or a fire hazard.

(B) However, a property owner shall not be held responsible for actions of his or her tenant.

**History.** Acts 1977, No. 883, § 4; A.S.A. 1947, § 82-3904; Acts 1999, No. 1164, § 65.

#### **8-6-407. Commercial refuse hauling by uncovered vehicles.**

It shall be unlawful for any person engaged in commercial or for-hire hauling to operate any truck or other vehicle within this state to transport litter, trash, or garbage unless the vehicle is covered to prevent its contents from blowing, dropping, falling off, or otherwise departing from the vehicle. In addition, any person operating his or her own truck or other vehicle to transport litter, trash, or garbage shall take reasonable steps to prevent its contents from blowing, dropping, falling off, or otherwise departing from the vehicle. However, no vehicle hauling predominately metallic material shall be required to be covered if it is loaded in a manner which will prevent the material from falling or dropping from the vehicle.

**History.** Acts 1977, No. 883, § 6; A.S.A. 1947, § 82-3906.



**8-6-408. Discarding certain items prohibited.**

It shall be unlawful for any person to place or cause to be placed any junk motor vehicle, old vehicle tire, or inoperative or abandoned household appliance, or part thereof, upon the right-of-way of any public highway, upon any other public property, or upon any private property which he or she does not own, lease, rent, or otherwise control, unless it is at a salvage yard; a permitted disposal site, or at the business establishment of a demolisher.

**History.** Acts 1977, No. 883, § 10; A.S.A. 1947, § 82-3910.

**8-6-409. Prima facie evidence against drivers.**

If the throwing, dumping, or depositing of litter was done from a motor vehicle, except a motor bus, it shall be prima facie evidence that the throwing, dumping, or depositing was done by the driver of the motor vehicle.

**History.** Acts 1977, No. 883, § 5; A.S.A. 1947, § 82-3905.

**8-6-410. Notice to the public required.**

The state shall erect signs containing pertinent portions of this subchapter along the public highways of this state and in all campgrounds and trailer parks, forestlands, and recreational areas, at all public beaches, and at other public places where persons are to be informed of the existence and content of this subchapter and the penalties for violating its provisions.

**History.** Acts 1977, No. 883, § 8; A.S.A. 1947, § 82-3908.

**8-6-411. Litter receptacles.**

The state shall place litter receptacles along public highways in appropriate numbers to provide motorists with convenient methods of litter disposal.

**History.** Acts 1977, No. 883, § 9; A.S.A. 1947, § 82-3909.

**8-6-412. Enforcement generally.**

- (a) All Arkansas-certified law enforcement officers:
  - (1) Shall enforce this subchapter;
  - (2) May issue citations to or arrest persons violating any provision of this subchapter; and
  - (3)(A) May serve and execute all warrants, citations, and other process issued by the courts in enforcing this subchapter.

(B) In addition, mailing by registered mail of the process to the person's last known place of residence shall be deemed as personal service upon the person charged.

(b)(1) Illegal dumps control officers licensed and certified in accordance with § 8-6-905 and code enforcement officers as defined by municipal ordinance may:

(A) Enforce this subchapter; and

(B) Issue citations to persons violating this subchapter.

(2) However, illegal dumps control officers licensed and certified in accordance with § 8-6-905 and code enforcement officers as defined by municipal ordinance shall not:

(A) Have the powers of arrest;

(B) Carry firearms; or

(C) Take any other official law enforcement actions.

(c)(1) All certified law enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing this subchapter.

(2) In addition, mailing by registered mail of the process to the person's last known place of residence shall be deemed as personal service upon the person charged.

**History.** Acts 1977, No. 883, § 3; A.S.A. 1947, § 82-3903; Acts 1999, No. 386, § 1; 2005, No. 75, § 1; 2007, No. 377, § 1.

**Amendments.** The 2007 amendment deleted "the provisions of" following "enforce" in (a)(1), (a)(3)(A) and (c)(1); substituted "May" for "Are empowered to" in (a)(2); added "and code enforcement officers as defined by municipal ordinance

may" in (b)(1); substituted "Enforce" for "May enforce the provisions of" in (b)(1)(A); substituted "Issue" for "Are empowered to issue" in (b)(1)(B); and substituted "licensed and certified in accordance with § 8-6-905 and code enforcement officers as defined by municipal ordinance shall" for "may" in (b)(2).

### **8-6-413. Authority to take possession of discarded items — Notice.**

(a)(1) Any enforcement agency described in § 8-6-412 which has knowledge of, discovers, or finds any junk motor vehicle, old vehicle tire, or inoperative or discarded household appliance on either public or private property may take it into custody and possession.

(2) The enforcement agency may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving, and storing junk motor vehicles, old vehicle tires, or inoperative or abandoned household appliances.

(b)(1) However, before taking any junk motor vehicle into custody and possession from private property, the enforcement agency shall give the private property owner and the owner of the motor vehicle, if ascertainable, thirty (30) days' notice by registered or certified mail or seventy-two (72) hours' notice by personal service that such an action will be taken unless the motor vehicle is:

(A) Restored to a functional use;

(B) Disposed of by the owner in a manner not prohibited by this subchapter; or

(C) Placed in an enclosed building.

(2) The thirty-days' or seventy-two-hours' notice under subdivision (b)(1) of this section may be waived by the owners of the property.

**History.** Acts 1977, No. 883, § 12; A.S.A. 1947, § 82-3912; Acts 2005, No. 1222, § 1.

#### **8-6-414. Notification to motor vehicle owner and lienholders — Reclamation.**

(a)(1) The enforcement agency which takes into custody and possession any junk motor vehicle, within thirty (30) days after taking custody and possession thereof, shall notify the last known registered owner of the motor vehicle and all lienholders of record that the motor vehicle has been taken into custody and possession.

(2) The notification shall be by registered or certified mail, return receipt requested.

(3) The notice shall:

(A) Contain a description of the motor vehicle, including the year, make, model, manufacturer's serial or identification number, or any other number which may have been assigned to the motor vehicle by the Office of Motor Vehicle and shall note any distinguishing marks;

(B) Set forth the location of the facility where the motor vehicle is being held and the location where the motor vehicle was taken into custody and possession; and

(C) Inform the owner and any lienholders of record of their right to reclaim the motor vehicle within ten (10) days after the date notice was received by the owner or lienholders upon payment of all towing, preservation, and storage charges resulting from taking and placing the motor vehicle into custody and possession and state that the failure of the owner or lienholders of record to exercise their right to reclaim the motor vehicle within the ten-day period shall be deemed a waiver by the owner and all lienholders of record of all right, title, and interest in the motor vehicle and of their consent to the sale or disposal of the junk motor vehicle at a public auction or to a salvage yard or demolisher.

(b)(1) If the identity of the last registered owner of the junk motor vehicle cannot be determined, if the certificate of registration or certificate of title contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, then notice shall be published in a newspaper of county-wide circulation in the county wherein the motor vehicle was located at the time the enforcement agency took custody and possession of the vehicle.

(2) This notice shall be sufficient to meet all requirements of notice pursuant to this section.



(3) Any notice by publication may contain multiple listings of junk motor vehicles.

(4) The notice shall be published within thirty (30) days after the motor vehicle is taken into custody and possession.

(5) The notice shall have the same contents required for a notice pursuant to subsection (a) of this section, except that the ten-day period shall run from the date such notice is published as prescribed.

(c) The consequences and effect of failure to reclaim a junk motor vehicle within the ten-day period after notice is received by registered or certified mail or within ten (10) days after the notice is published in a newspaper as prescribed shall be set forth in the notice.

**History.** Acts 1977, No. 883, § 13;  
A.S.A. 1947, § 82-3913.

### **8-6-415. Sale of junk vehicles and discarded items.**

(a) If a junk motor vehicle is not reclaimed as provided for in § 8-6-414, the enforcement agency in possession of the junk motor vehicle shall sell it either at a public auction or to a salvage yard or demolisher. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership and shall receive a sales receipt from the enforcement agency which disposed of the motor vehicle. The sales receipt at the sale shall be sufficient title only for purposes of transferring the motor vehicle to a salvage yard or to a demolisher for demolition, wrecking, or dismantling. No further titling of the motor vehicle shall be necessary by either the purchaser at the auction, the salvage yard, or the demolisher, who shall be exempt from the payment of any fees and taxes.

(b) When an enforcement agency has in its custody and possession old vehicle tires or inoperative or discarded household appliances collected in accordance with § 8-6-413, it shall sell property, from time to time, at public auction or to a salvage yard or demolisher.

**History.** Acts 1977, No. 883, § 14;  
A.S.A. 1947, § 82-3914.

### **8-6-416. Disposition of sale proceeds.**

(a) From the proceeds of any sale, the enforcement agency which sold the junk motor vehicle, old vehicle tire, or inoperative or discarded household appliance shall reimburse itself for any expenses it may have incurred in removing, towing, preserving, and storing the property and for the expenses of conducting any auction and any notice and publication expenses incurred pursuant to this subchapter.

(b) Any remainder from the proceeds of the sale shall be deposited in the State Treasury to be kept and maintained in the Litter Control Account. Any remainder from the proceeds of the sale of a junk motor vehicle after payment of the expenses shall be held for the last registered owner of the motor vehicle or any lienholder for ninety (90)

days, after which time, if no owner or lienholder claims the remainder, it shall be deposited in the special fund.

(c) Any moneys so collected and deposited in the Litter Control Account shall be used solely for the payment of auction, towing, removing, preserving, storing, notice, and publication costs which result from taking other junk motor vehicles, old vehicle tires, and inoperative or discarded household appliances into custody and possession.

**History.** Acts 1977, No. 883, § 15; A.S.A. 1947, § 82-3915.

### **8-6-417. [Repealed.]**

**Publisher's Notes.** This section, concerning the Advisory Board, was repealed by Acts 1991, No. 786, § 6. The section was derived from Acts 1977, No. 883, § 17; A.S.A. 1947, § 82-3917.

Acts 1989, No. 536, § 8, abolished the Advisory Board on the Control of Litter and Junk.

### **8-6-418. Possession or use of glass containers on navigable waterways.**

(a)(1) Except for containers for medicinal substances contained in a first-aid kit or prescribed by a licensed physician, and except as provided under subdivision (a)(2) of this section, no person shall possess or use glass containers within a vessel within the banks of Arkansas's navigable waterways.

(2) A person engaged in removing glass previously discarded by others and found within the banks of an Arkansas navigable waterway may not be charged with a violation of this section on the basis of possession of glass, if while underway and upon a waterway, he or she transports the removed glass securely in a trash container.

(b)(1) A person entering, traveling upon, or otherwise using Arkansas's navigable waterways by canoe, kayak, inner tube, or other vessel easily susceptible to swamping, tipping, rolling, or otherwise discharging its contents into a waterway, and transporting foodstuffs or beverages shall:

(A) Transport all foodstuffs and beverages in a sturdy container and ensure that the container is made to seal or lock in the contents to prevent the contents from spilling into the water;

(B)(i) Carry and affix to the vessel a trash container or bag suitable for containing his or her refuse, waste, and trash materials and capable of being securely closed.

(ii) The trash container or bag shall be either a sturdy container, of a construction similar to a sturdy container, or a bag of mesh construction;

(C)(i) Except as provided under subdivision (b)(1)(C)(ii) of this section, transport all his or her refuse, waste, and trash either in a

sturdy container or in a trash container to a place where the refuse, waste, and trash may be safely and lawfully disposed of.

(ii) A person engaged in removing items of refuse, waste, and trash materials previously discarded by others and found by him or her within the banks of an Arkansas navigable waterway and that are too large to be transported in a trash container or bag, may not be charged with a violation of this section on the basis of possession and transportation of the refuse, waste, and trash; and

(D) At all times other than when a beverage is securely contained in a sturdy container or a trash container as in subdivisions (b)(1)(A)-(C) of this section, keep the beverage attached to or held within a floating holder or other device designed to prevent the beverage from sinking beneath the surface of the waterway.

(2) Neither a sturdy container nor a trash container may be required of a person traveling without foodstuffs or beverages.

(c)(1) A violation of this section shall be a misdemeanor and each violation may be prosecuted as a separate offense.

(2) Each violation shall be punishable by a fine of not more than five hundred dollars (\$500).

(d) For purposes of this section:

(1) "Navigable waterway" means any navigable river, lake, or other body of water used or susceptible to being used in its natural condition by canoe, kayak, innertube, or other vessel easily susceptible to swamping, tipping, or rolling and located wholly or partly within this state;

(2) "Sturdy container" shall not include a container that is:

(A) Primarily constructed of styrofoam; or

(B) So constructed that it may be easily broken; and

(3) "Vessel" shall not include a houseboat, party barge, johnboat, runabout, ski boat, bass boat, or similar craft not easily susceptible to swamping, tipping, or rolling.

**History.** Acts 2001, No. 803, § 1; 2003, No. 1101, § 1.

SUBCHAPTER 5 — ILLEGAL DUMP ERADICATION AND CORRECTIVE ACTION  
PROGRAM ACT

SECTION.	SECTION.
8-6-501. Title.	8-6-507. Consequences of unpaid fines and costs.
8-6-502. Purpose.	8-6-508. Enforcement generally.
8-6-503. Definitions.	8-6-509. Agricultural operations.
8-6-504. Illegal Dump Eradication and Corrective Action Program.	8-6-510. Effectiveness of regulations and orders.
8-6-505. Proceedings generally.	
8-6-506. Criminal, civil, and administrative penalties.	



**Effective Dates.** Acts 1997, No. 938, § 9: July 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the fiscal year begins on July 1, and that this emergency clause is necessary in order that uniformity can be achieved at the beginning of the 1997-1998 fiscal year for money deposited into the Landfill Post-Closure Trust Fund and the moneys allocated from that fund for the Illegal Dump Eradication and Corrective Action Program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

Acts 2005, No. 75, § 4: Feb. 7, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that current

resources are limited to enforce the Litter Control Act; that this act authorizes illegal dumps control officers to issue citations for violations of the Litter Control Act; that this act clarifies the proper disposal of solid waste from illegal dumps; and that this act is immediately necessary to provide additional resources for the control of litter and the proper disposal of solid waste. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**C.J.S.** 39A C.J.S., Health & Envir., § 44.

### 8-6-501. Title.

This subchapter shall be known and may be cited as the "Illegal Dump Eradication and Corrective Action Program Act".

**History.** Acts 1995, No. 502, § 1; 1997, No. 938, § 1. has been renumbered by Acts 1995, No. 502 as § 8-6-503.

**Publisher's Notes.** Former § 8-6-501

### 8-6-502. Purpose.

It is the purpose of this subchapter to set forth the policy of the state to eliminate the illegal dumping of solid waste and to provide a means of funding the program. This subchapter defines illegal dumps and establishes elimination proceedings and provides a mechanism for funding.

**History.** Acts 1995, No. 502, § 1; 1997, No. 938, § 1. Code Revision Commission redesignated the amendment to be § 8-6-503.

**A.C.R.C. Notes.** Acts 1997, No. 1207, § 1, purported to add the definition for "illegal dumps control officer" to § 8-6-502. Pursuant to § 1-2-303, the Arkansas **Publisher's Notes.** Former § 8-6-502 has been renumbered as § 8-6-504 by Acts 1995, No. 502; and as § 8-6-505 by Acts 1997, No. 938.

**8-6-503. Definitions.**

As used in this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "Illegal dump" means any place at which solid waste is placed, deposited, abandoned, dumped, or otherwise disposed of in a manner that is prohibited by this subchapter or other statutes, rules, or regulations, and which constitutes one (1) of the following:

(A) An attractive nuisance;

(B) A fire, health, or safety hazard;

(C) A potential source of surface or groundwater contamination; or

(D) Other contamination that is hazardous to the public health or endangers the environment;

(5) "Illegal dumping of solid waste" means the illegal placing, depositing, dumping, or causing to be placed, deposited, or dumped by any person any solid waste that is prohibited by this chapter:

(A) In or upon any public or private highway or road, including any portion of the right-of-way thereof;

(B) In or upon any private property into or upon which the public is admitted by easement or license or any private property;

(C) In or upon any public park or other public property, other than the property designated or set aside for such purpose by the governing board or body having charge thereof; or

(D) Upon any property for which a permit has not been issued by the department;

(6) "Illegal dumps control officer" means an individual employed by a duly authorized regional solid waste management district within this state, a county government within this state, or a pollution control inspector or other authorized representative of the department who is empowered to ensure compliance with the provisions of this subchapter;

(7) "Landfill" means all landfills permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except those landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character;

(8) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, municipal authority, or trust, venture, or other legal entity, however organized; and

(9) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid,

liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954.

**History.** Acts 1977, No. 380, § 1; A.S.A. 1947, § 82-2729; Acts 1995, No. 502, § 1; 1997, No. 938, § 1; 1997, No. 1207, § 1; 1999, No. 1164, §§ 66, 67; 2009, No. 1199, § 7.

**A.C.R.C. Notes.** Acts 1997, No. 1207, § 1, purported to add the definition for “illegal dumps control officer” to § 8-6-502. Pursuant to § 1-2-303, the Arkansas Code Revision Commission redesignated the amendment to be § 8-6-503.

**Publisher’s Notes.** Prior to 1995, this section was codified as § 8-6-501.

**Amendments.** The 2009 amendment, in (4), deleted “and/or any of” following “one (1) of” in the introductory language, and substituted “or” for “and/or” in (4)(C).

**U.S. Code.** The Atomic Energy Act of 1954, referred to in this section, is codified primarily as 42 U.S.C. § 2011 et seq.

## 8-6-504. Illegal Dump Eradication and Corrective Action Program.

The Illegal Dump Eradication and Corrective Action Program shall be administered by the Arkansas Department of Environmental Quality.

**History.** Acts 1997, No. 938, § 1; 2005, No. 1962, § 17.

**Publisher’s Notes.** Former § 8-6-504,

which had been § 8-6-502 prior to 1995, has been renumbered by Acts 1997, No. 938 as § 8-6-505.

## 8-6-505. Proceedings generally.

(a) Any government official or employee or any person who has knowledge of or information on the illegal dumping of solid waste on any public or private property in this state may file a complaint in a court of competent jurisdiction of the county in which the illegal dumping of solid waste has taken place or in the county of residence of the person who is accused of being liable for the illegal dumping of the solid waste.

(b)(1) Upon the filing of a verified complaint, noting on the complaint the person against whom the claim is filed, the court shall enter a temporary order directing that the accused person remove from the described public or private property the solid waste that has been illegally dumped on the property and properly dispose of the solid waste in a permitted landfill or other facility within ten (10) days from the date of the order.

(2) The sheriff of the county shall serve the order.

(3) Upon the order’s being served, the accused party shall:

(A) Remove the solid waste in question from the public or private property as described in the order;



(B) Dispose of the solid waste at a properly permitted solid waste transfer station, landfill, recycling center, or incinerator; and

(C) Return to the court a disposal receipt from the facility where the solid waste was disposed.

(4) If the person wishes to challenge the order, the person may file a petition challenging the order with the court within ten (10) days from the date the order is served.

(c)(1) Upon the filing of a petition challenging the order, the court shall hold a hearing on it within fourteen (14) days after the filing of the petition and shall serve notice upon the accusing party and upon the accused.

(2) At the hearing, which may be continued from time to time as determined by the court, the court shall hear all evidence and testimony and after hearing it shall enter an order either dismissing the original or temporary order or making the order permanent.

(3) The parties represented at the hearing may be represented by counsel.

(d)(1) If the order is made permanent, within ten (10) days thereafter the accused party shall cause the solid waste which has been illegally dumped on private or public property to be removed from the property and disposed of properly in a permitted landfill or other facility.

(2)(A) If after ten (10) days from the date of the order the person against whom the order is directed has not removed the solid waste from the public or private property and properly disposed of it as noted in the order, the governmental agency or the owner of the property may cause it to be moved and shall file with a court a verified statement in writing of the cost of removal.

(B) After reviewing the statement, if the court determines it to be reasonable, the court shall enter an order upon the judgment docket of the court of the amount of the statement, which shall be a judgment against the party against whom the judgment was issued and may be enforced as any other judgment.

(e)(1) Any party aggrieved by any order of a court under this subchapter may appeal from the order.

(2) If an aggrieved party appeals to a circuit court of competent jurisdiction, then the circuit court shall try the cause de novo.

**History.** Acts 1977, No. 380, § 2; A.S.A. 1947, § 82-2730; Acts 1995, No. 502, § 1; 1997, No. 938, § 1; 2005, No. 75, § 2.

938 as § 8-6-506. Prior to 1997, this section was codified as § 8-6-504; prior to 1995, this section was codified as § 8-6-502.

**Publisher's Notes.** Former § 8-6-505 has been renumbered by Acts 1997, No.

## 8-6-506. Criminal, civil, and administrative penalties.

In addition to the proceedings described in § 8-6-505, every person convicted of a violation of this subchapter shall be subject to the criminal, civil, or administrative penalties as specified in § 8-6-204.

**History.** Acts 1995, No. 502, § 1; 1997, No. 938, § 1. has been renumbered by Acts 1997, No. 938 as § 8-6-507. This section was formerly codified as § 8-6-505.

**Publisher's Notes.** Former § 8-6-506

### **8-6-507. Consequences of unpaid fines and costs.**

(a) In all convictions for violations of the provisions of this subchapter when the fine and costs are not paid, the person convicted shall be subject to administrative or civil enforcement action.

(b) Sanctions may include administrative, civil, or criminal penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

**History.** Acts 1995, No. 502, § 1; 1997, No. 938, § 1.

**Publisher's Notes.** Prior to 1997, this section was codified as § 8-6-506.

### **8-6-508. Enforcement generally.**

(a)(1) Illegal dumps control officers are empowered to ensure compliance with the provisions of this subchapter by having the right and duty to:

(A) Inspect suspected illegal dumps;

(B) Collect evidence of open dumping and littering and present the evidence to the prosecuting attorney or a court of competent jurisdiction where the offense was committed; and

(C) Issue and serve citations for violations of provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., prohibiting illegal dumping, subject to exemptions under § 8-6-205 and the agricultural exemptions under § 8-6-509, and for violations of the Litter Control Act, § 8-6-401 et seq., prohibiting unlawful littering.

(2) Citations issued by illegal dumps control officers shall be filed in any court having jurisdiction in the county where the offense is committed.

(3)(A) Citations may be served in person or by mailing a copy of the citation by certified mail, restricted delivery, to either the address obtained from evidence collected from the illegal dump or to the person's last known address. Persons receiving citations shall appear before the court named within the citation at the time designation in the citation.

(B) Courts having jurisdiction over citations issued by illegal dumps control officers may issue penalties as specified in § 8-6-204(a).

(4) Illegal dumps control officers may require violators to present signed and dated disposal receipts as evidence that the solid waste has been:

(A) Removed from the illegal dump; and

(B) Properly disposed of in one (1) or more of the following facilities:

(i) A permitted landfill;

(ii) A solid waste transfer station;

- (iii) A recycling center;
  - (iv) An incinerator;
  - (v) A scrap yard that purchases iron, steel, aluminum, or other metals;
  - (vi) A permitted waste tire collection center or waste tire processing facility; or
  - (vii) Any other facility that the illegal dumps control officer finds to be a proper disposal of the solid waste.
- (b) All illegal dumps control officers shall be licensed and certified in accordance with § 8-6-901 et seq.
- (c) Illegal dumps control officers shall not have powers of arrest.

**History.** Acts 1997, No. 1207, § 2; 2001, No. 1686, § 1; 2005, No. 75, § 3.

**8-6-509. Agricultural operations.**

The Arkansas Solid Waste Management Act, § 8-6-201 et seq., this subchapter, and § 8-6-901 et seq. do not apply to:

- (1) Any place at which agricultural gleanings and crop residue resulting from operations of farms, grain elevators, cotton gins, and similar industries are being land applied according to current management practices of such industries or the agricultural community and with the consent of the landowner is not an illegal dump; and
- (2) Any landowner who disposes of solid waste on the property on which waste results from such agricultural or farming operations or household operations and such disposal does not constitute a fire, health, or safety hazard to the public.

**History.** Acts 1997, No. 1207, § 5. §§ 8-6-501 to 8-6-506 may not apply to this section which was enacted subsequently.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-4, 6-16, and

**8-6-510. Effectiveness of regulations and orders.**

None of the provisions of this subchapter are intended to supersede any of the reuse, recycling, or fill provisions of state law of Regulation 22 of the Solid Waste Management Division of the Arkansas Department of Environmental Quality.

**History.** Acts 1997, No. 1207, § 6; 1999, No. 1164, § 68. §§ 8-6-101 to 8-6-506 may not apply to this section which was enacted subsequently.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-4, 6-16, and

**SUBCHAPTER 6 — SOLID WASTE MANAGEMENT AND RECYCLING FUND ACT**

SECTION.	SECTION.
8-6-601. Title.	8-6-603. Definitions.
8-6-602. Legislative findings and intent — Duties of department — Construction.	8-6-604. Recycling plans and implementation.
	8-6-605. Solid Waste Management and



## SECTION.

## Recycling Fund.

- 8-6-606. Landfill disposal fees.
- 8-6-607. Collection of fees.
- 8-6-608. Penalties.
- 8-6-609. Grant program.
- 8-6-610. Rules and regulations — Conditions imposed upon grant recipients.

## SECTION.

- 8-6-611. Computation of fees.
- 8-6-612. Landfill disposal fees to support a computer and electronic equipment recycling program.
- 8-6-613. Computer and electronic equipment recycling program.
- 8-6-614. Effective date.

**Effective Dates.** Acts 1992 (1st Ex. Sess.), No. 8, § 5[6]: Feb. 27, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that matching grants for regional solid waste management districts be available as soon as possible to allow the districts to benefit therefrom. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1127, § 7: Apr. 13, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in siting landfill facilities at the local level. It is found that the authority granted to municipalities and counties to adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than those adopted by the federal, state and regional laws, rules, regulations, and orders, has exacerbated and attenuated this crises and could thwart or jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. Therefore, an emergency is hereby declared to exist, and this

act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

## RESEARCH REFERENCES

U. Ark. Little Rock L.J. Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source

Separation and Recycling of Solid Waste Act, 11 U. Ark. Little Rock L.J. 733.

**8-6-601. Title.**

This subchapter may be known and cited as the "Solid Waste Management and Recycling Fund Act".

**History.** Acts 1989, No. 849, § 1; 1989, No. 934, § 1.

**8-6-602. Legislative findings and intent — Duties of department — Construction.**

(a) The General Assembly finds that the solid waste needs of the state are not being met in an efficient, cost-efficient, and environmentally sound manner. The current reliance upon localized landfills is threatening to add Arkansas to those states experiencing solid waste management crises.

(b) The General Assembly concludes that, to the extent practicable, regional solid waste management systems should be developed which address solid waste needs in the context of cooperation and shared resources.

(c)(1) The General Assembly finds that recycling glass, plastic, cans, paper, and other materials will reduce the state's reliance upon landfills.

(2) Additionally, other solid waste reduction activities will help reduce the state's dependence on landfills, including:

(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the department.

(3) The waste stream reduction activities described in subdivision (c)(2) of this section also curb littering, illegal dumping, and abate the environmental risks caused by current solid waste practices.

(4) The General Assembly therefore mandates that recycling shall be integrated as a component of any solid waste management plan required under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and that these recycling plans shall be implemented under the terms of this subchapter.

(d) The Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission are charged with the duty to promulgate and implement policies, regulations, and procedures for administering the terms of this subchapter, including a grant program to develop solid waste management plans, programs, and facilities which stress recycling.

(e) The terms and obligations of this subchapter shall be liberally construed so as to achieve remedial intent.

**History.** Acts 1989, No. 849, § 2; 1989, No. 934, § 2; 2011, No. 819, § 1.

**Amendments.** The 2011 amendment inserted present (c)(2) and redesignated the remaining subdivisions accordingly;

and, in (c)(3), added “The waste stream reduction activities described in subdivision (c)(2) of this section also” and inserted “illegal dumping.”

### 8-6-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(2) “Department” means the Arkansas Department of Environmental Quality;

(3) “Landfill” means all landfills permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except those permitted landfills operated by a regulated public utility for ash generated by the combustion of coal to produce electric energy;

(4) “Permittee” means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity holding a solid waste disposal permit as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(5) “Recycling” means the systematic collection, sorting, decontamination, and return of waste materials to commerce as commodities for use or exchange;

(6) “Solid waste” means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, 68 Stat. 923;

(7) “Solid waste disposal permit” means a permit issued by the State of Arkansas under the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., for the construction and operation of a landfill waste disposal facility;

(8) “Solid waste management” means the management of, but is not limited to, the storage, collection, transfer, transportation, treatment, utilization, processing, and final disposal of solid waste, including, but not limited to, the prevention, reduction, or recycling of wastes;

(9) “Solid waste management plan” means a plan which is developed according to the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq., and guidelines of the department, and which is subject to approval by the department;

(10) “Solid waste reduction activities” means other activities that divert materials from landfills for reuse, including without limitation:



(A) Using waste items as raw materials in a production process, such as adding shingles to asphalt mix for paving;

(B) Using waste items to produce an end product without recycling, such as returning wood chips to citizens as mulch;

(C) Using waste items as fuel, such as burning wood chips or tire chips in a waste-to-fuel process; or

(D) Other activities as approved by the department; and

(11) "Transporter" or "solid waste transporter" means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity transporting solid waste within the state that is to be disposed of outside the state.

**History.** Acts 1989, No. 849, § 3; 1989, No. 934, § 3; 1991, No. 755, § 1; 1993, No. 1127, § 3; 1995, No. 511, § 1; 1999, No. 1164, § 69; 2011, No. 819, § 2.

**A.C.R.C. Notes.** Acts 2010, No. 213, § 44, provided: "LANDFILL DISPOSAL FEES.

"(a)(1) The collection of all landfill disposal fees that are or were to be collected under § 8-6-612 shall be suspended until July 1, 2011, and collection of the following landfill disposal fees shall be substituted until that date:

"(A) Each landfill permittee shall pay fifteen cents (15¢) per uncompacted cubic yard of solid waste; and

"(B) Each landfill permittee shall pay thirty cents (30¢) per compacted cubic yard of solid waste received at the landfill.

"(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar (\$1.00) per ton of solid waste received at the landfill.

"(b) The following shall be exempt from payment of fees under subsection (a) of this section:

"(1) A solid waste transporter under § 8-6-603(10); and

"(2) A landfill permittee where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

"(c) The fees under subdivisions (a) of this section shall be:

"(1) Collected in the same manner as stated in § 8-6-607(1) and (2); and

"(2) Deemed to be special revenues to be deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund for support of the computer and electronic recycling program.

"(d) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the fees under subsection (a) of this section."

Acts 2011, No. 957, § 43, provided: "LANDFILL DISPOSAL FEES.

"(a)(1) The collection of all landfill disposal fees that are or were to be collected under § 8-6-612 shall be suspended until July 1, 2012, and collection of the following landfill disposal fees shall be substituted until that date:

"(A) Each landfill permittee shall pay fifteen cents (15¢) per uncompacted cubic yard of solid waste; and

"(B) Each landfill permittee shall pay thirty cents (30¢) per compacted cubic yard of solid waste received at the landfill.

"(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar (\$1.00) per ton of solid waste received at the landfill.

"(b) The following shall be exempt from payment of fees under subsection (a) of this section:

"(1) A solid waste transporter under § 8-6-603(10); and

"(2) A landfill permittee where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

"(c) The fees under subdivisions (a) of this section shall be:

"(1) Collected in the same manner as stated in § 8-6-607(1) and (2); and

"(2) Deemed to be special revenues to be deposited into the State Treasury to the credit of the Solid Waste Management and

Recycling Fund for support of the computer and electronic recycling program.

“(d) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the

fees under subsection (a) of this section.”

**Amendments.** The 2011 amendment inserted present (10) and redesignated the remaining subdivision accordingly.

**U.S. Code.** The Atomic Energy Act of 1954, referred to in (6), is codified primarily as 42 U.S.C. § 2011 et seq.

### **8-6-604. Recycling plans and implementation.**

(a) Unless otherwise excused by the Arkansas Pollution Control and Ecology Commission pursuant to the Arkansas Solid Waste Management Act, § 8-6-201 et seq., each governmental entity which is required to submit or has submitted a solid waste management plan pursuant to § 8-6-211 shall produce, by July 1, 1991, a solid waste management plan which proposes the establishment of recycling programs and facilities. The plan shall be subject to review and approval by the Arkansas Department of Environmental Quality.

(b) Pursuant to established procedures, the department may initiate enforcement actions against governmental entities for failure to abide by the requirements of subsection (a) of this section. Enforcement sanctions may include, but are not limited to, denial, discontinuation, or reimbursement of grant funds awarded pursuant to any programs administered by the department.

**History.** Acts 1989, No. 849, § 4; 1989, No. 934, § 4.

### **8-6-605. Solid Waste Management and Recycling Fund.**

(a)(1) A Solid Waste Management and Recycling Fund is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(2) The fund shall be administered by the department, which shall authorize grants and administrative expenditures from the fund according to the provisions of this subchapter.

(3) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited in the fund all landfill disposal fees collected pursuant to §§ 8-6-606 and 8-6-607, all moneys reimbursed to the department pursuant to § 8-6-610, federal government moneys designated to enter the fund, any moneys received by the state as a gift or donation to the fund, and all interest earned upon money deposited in the fund.

(4) No more than twenty-five percent (25%) of the moneys received annually into the fund shall be used by the department for the administration of a solid waste management and recycling program and for solid waste management compliance and enforcement activities at landfills and open dumps.

(b) There shall also be deposited into the fund all landfill disposal fees collected under § 8-6-612 to be used exclusively for computer and electronic equipment recycling activities as authorized in § 8-6-613.

**History.** Acts 1989, No. 849, § 5; 1989, No. 934, § 5; 2007, No. 512, § 1. added the (a)(1), (a)(2) and (a)(3) designations, and added (b).

**Amendments.** The 2007 amendment

### 8-6-606. Landfill disposal fees.

(a)(1) Except as provided in subsection (c) or (e) of this section, there is imposed on each landfill permittee a landfill disposal fee of twenty-five cents (25¢) for each uncompacted cubic yard of solid waste and forty-five cents (45¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar and fifty cents (\$1.50) for each one (1) ton (2,000 lbs.) of solid waste received at the landfill.

(b)(1) Except as provided in subsections (a) and (c) of this section, for all solid waste generated and transported within the state but to be disposed of outside the state, there is imposed on each such solid waste transporter a solid waste transportation fee of twenty-five cents (25¢) for each uncompacted cubic yard of solid waste and forty-five cents (45¢) for each compacted cubic yard of solid waste transported.

(2) If a solid waste transporter chooses to operate on a weight basis, the solid waste transportation fee shall be one dollar and fifty cents (\$1.50) for each ton of solid waste transported in the state.

(c)(1) For those permitted landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry, there is imposed on each landfill permittee a landfill disposal fee of ten cents (10¢) for each uncompacted cubic yard of solid waste and twenty cents (20¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If the landfill permittee chooses to operate on a weight basis, the landfill disposal fee under this subsection shall be fifty cents (50¢) for each ton of solid waste received at the landfill.

(d)(1)(A) By January 1, 2004, all permitted facilities identified by regulation of the Arkansas Pollution Control and Ecology Commission as Class 1 and Class 3C landfills, except those permitted landfills that shall comply with closure requirements before January 1, 2005, shall install scales and commence weighing all solid waste received at the landfill.

(B) This requirement may be satisfied by utilizing an alternative weighing system approved by the Director of the Arkansas Department of Environmental Quality.

(2) Class 1 and Class 3C landfills shall be required to weigh all loads in excess of one (1) ton (2,000 lbs.), unless otherwise authorized in writing by the Arkansas Department of Environmental Quality. This provision authorizes Class 1 and Class 3C landfills to estimate weights for residential and other similar loads weighing less than one (1) ton (2,000 lbs.).

(3) Class 1 and Class 3C landfills shall install and operate scales for the purpose of weighing solid waste received at the landfill and shall



maintain and operate the scales in accordance with the United States Department of Agriculture standards.

(4) Except as provided in subdivisions (d)(1) and (2) of this section, beginning January 1, 2004:

(A) All quarterly reports required by this subchapter to be submitted by Class 1 and Class 3C landfill permittees to the Arkansas Department of Environmental Quality shall accurately state the total weight of solid waste received at the landfill, and the total weight of solid waste received at the landfill shall be based upon the recorded weight scale measurements; and

(B) The recorded weight scale measurements of solid waste received at Class 1 and Class 3C landfills shall be used to calculate the solid waste disposal fees payable to the Arkansas Department of Environmental Quality by Class 1 and Class 3C landfill permittees.

(e) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the landfill disposal fee under this section.

**History.** Acts 1989, No. 849, § 6; 1989, No. 934, § 6; 1991, No. 754, § 1; 1993, No. 1127, § 3; 2001, No. 217, §§ 1, 2; 2003, No. 1337, § 1; 2009, No. 189, §§ 1, 2.

**Amendments.** The 2009 amendment inserted "or (e)" in (a)(1); and added (e).

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

Survey of Legislation, 2003 Arkansas General Assembly, Environmental Law, 26 U. Ark. Little Rock L. Rev. 405.

## CASE NOTES

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep't of Pollution Con-

trol & Ecology, 137 B.R. 735 (E.D. Ark. 1992).

## 8-6-607. Collection of fees.

Fees imposed pursuant to the separate provisions of this subchapter shall be collected as follows:

(1) Each landfill permittee and each transporter shall submit to the department on or before January 15, April 15, July 15, and October 15 of each year a quarterly report which accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the quarter just completed;

(2) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and solid waste transporter shall pay to the Arkansas Department of Environmental Quality the full amount of such disposal fees due for the quarter just completed;

(3) Except as provided in subdivision (4) of this section, the disposal and transportation fees collected pursuant to this section shall be

special revenues and shall be deposited in the State Treasury to the credit of the Solid Waste Management and Recycling Fund for administrative support of the State Marketing Board for Recyclables; and

(4)(A) Twenty-five percent (25%) of the disposal fees collected from landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry shall be deposited into a special fund to be created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State and to be known as the "Marketing Board Fund".

(B) The fund shall be administered by the department and used by the State Marketing Board for Recyclables for the administration and performance of its duties.

**History.** Acts 1989, No. 849, § 7; 1989, No. 934, § 7; 1991, No. 755, § 2; 1993, No. 1127, § 3; 1995, No. 511, § 2.

### **8-6-608. Penalties.**

Failure of the permittee or transporter to pay the fees assessed by the Arkansas Department of Environmental Quality provides grounds for administrative or civil enforcement action. Sanctions may include civil penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the revocation of the solid waste disposal or transporter permit.

**History.** Acts 1989, No. 849, § 8; 1989, No. 934, § 8; 1993, No. 1127, § 3.

### **8-6-609. Grant program.**

(a) There is created a grant program of assistance for districts and local governments and their delegated authorities and agents to develop solid waste management plans, programs, and facilities that integrate recycling as a functional part of the solid waste management system, provided that the legislative preference for regional or multi-county solid waste management planning is implemented in the administration of this grant program.

(b)(1)(A) Any county, city, multicounty, regional, or other solid waste authority is eligible for a grant pursuant to rules and regulations adopted by the Arkansas Pollution Control and Ecology Commission and administered by the Arkansas Department of Environmental Quality.

(B) Funds collected under the provisions of § 8-6-607 and deposited in the State Treasury to the credit of the Solid Waste Management and Recycling Fund, less up to twenty-five percent (25%) for administrative support for the department, shall be annually allocated to each of the approved regional solid waste management districts for costs eligible for grant assistance utilizing a combination

of two (2) methods, hereafter referred to as “method A” and “method B”.

(C) Fifty percent (50%) of set-aside funds will be determined using method A, and fifty percent (50%) will be determined using method B.

(D) The total figures obtained from each method will be combined to arrive at each regional solid waste management district's fund distribution.

(2) Method A.

(A)(i) The department shall determine the amount of funds within each planning and development district organized under § 14-166-201 et seq., and recognized by the Governor, based upon the same distribution as general revenue support is distributed to the planning and development districts in the current fiscal year.

(ii) The department shall adjust the distribution within the planning and development districts to coincide with the boundaries of the regional solid waste management districts by determining each county's share of the funds available within each planning and development district.

(iii) Each county's share shall be based upon the proportion that each county's population bears to the total population in the planning and development district to which the county is assigned, multiplied by the amount of funds determined to be available within the planning and development district.

(iv) The county's proportional share, as determined, shall be added to all other counties' shares within the same regional solid waste management district.

(B) Formula for method A:

(i) Begin with fifty percent (50%) of the total remaining grant funds;

(ii) Divide equally by the eight (8) regional planning and development districts;

(iii) Multiply this result by the most recent federal decennial census population of each county; and

(iv) Divide this result by the planning and development district population in which the county is located. This determines the portion per county. Individual county portions are grouped and totaled by each new regional solid waste management district to give each regional solid waste management district's allocation.

(3) Method B.

(A) The remaining fifty percent (50%) of set-aside funds in a grant round shall be based upon the ratio of the district's 1990 or current decennial census population divided by the most recent federal decennial census state population.

(B) Formula for method B:

(i) Begin with each solid waste management district's total population;

(ii) Divide by the state's most recent federal decennial census population to get the ratio; and



(iii) Multiply by the total remaining grant funds.

This equals each regional solid waste management district's allocation.

(4) Funds set aside for each district in a grant round that are not awarded to the district will be rolled over to the next grant round.

(5) Funds set aside to two (2) or more districts in a grant round may be combined to fund a joint application, provided the joint application has been signed by the regional solid waste management board chair for each district.

(c)(1) Costs eligible for grant assistance include without limitation costs for:

(A) Solid waste management planning that integrates recycling;

(B) Public information and education programs that encourage waste reduction and stimulate demand for products produced from recycled materials;

(C) Waste transfer facilities that integrate recycling in their operations;

(D) Equipment to be used no less than fifty percent (50%) of the time on recycling activities or other grant-funded projects;

(E) Recycling and for recycling activities associated with illegal dump abatement programs;

(F) Other waste stream reduction activities that divert the flow of materials away from landfills to be put to beneficial use; and

(G) Activities that support and are an integral part of a recycling system, including without limitation, operation, construction, and logistical systems.

(2) Grant assistance shall not be provided for purchasing mechanical processing equipment or facilities if existing mechanical processing equipment or facilities adequately serve the relevant area, unless the regional solid waste management board determines and submits the rationale for the determination along with the grant application to the department that the equipment or facility is an indispensable component of an otherwise eligible grant project and would more efficiently serve the relevant area.

(3)(A) The total amount of grants for administrative costs set out for all districts shall not exceed five hundred thousand dollars (\$500,000) per annum.

(B) The department is granted authority to develop regulations in accordance with this section.

(4) Each regional solid waste management district may use up to twenty-five percent (25%) of its annual allocation for the administration of its regional solid waste management plan as approved by the department.

(5)(A) Each regional solid waste management district is responsible for the grant application process and acceptance of grant applications from its district members.

(B) The district shall prioritize and select grant projects from its district members for submission to the department, the selection being the sole discretion of the district.

(6) Once grant project applications are submitted to the department, the department shall approve those projects which comply with the requirements and intent of this subchapter.

(d)(1)(A) The department shall prepare an annual progress report on grant assistance made under this section.

(B) The report shall include:

- (i) The amount of each grant;
- (ii) The purpose of the grant;
- (iii) How grant funds were expended by the grant recipient;
- (iv) The results produced or the progress made; and
- (v) The revenues produced and tonnages of materials collected.

(C) The report for each state fiscal year shall be filed by November 1 of the following fiscal year with the office of the Governor and the Legislative Council.

(D) The report shall include information on grant recipients for a period of five (5) years from the date of disbursement of funds by the department.

(2)(A)(i) Until all grant funds have been expended on a project, regional solid waste management boards shall provide the department with an annual report summarizing:

(a) Progress in the project; and

(b)(1) An expense itemization for each grant award.

(2) An expense itemization is a listing of expenditures that includes expenditure date, item purchased, purchase price, and name of vendor.

(ii) Copies of invoices, purchase orders, checks, or other supporting documents for these expenditures shall be kept on file at the regional solid waste district and shall be produced upon request for on-site inspection by the department.

(iii) Copies of invoices, purchase orders, checks, or other supporting documents shall be required for equipment purchases and shall be submitted to the department with progress reports.

(B) For a period of five (5) years after a grant recipient's receipt of grant funds, regional solid waste management boards shall provide the department an annual report summarizing:

(i) Tonnages of materials collected by the grant recipient; and

(ii) Revenues produced by the sale of materials collected.

(C) The reports shall be filed annually on or before September 1.

(D) Failure by a board to file the required reports shall provide grounds for the department to withhold disbursement of grant funds for subsequent grant rounds.

**History.** Acts 1989, No. 849, § 9; 1989, No. 934, § 9; 1991, No. 749, § 5; 1992 (1st Ex. Sess.), No. 8, § 2; 1993, No. 1030, § 1; 1995, No. 463, § 1; 1999, No. 428, § 1; 2001, No. 70, § 1; 2003, No. 1027, § 1; 2005, No. 1325, § 1; 2011, No. 819, §§ 3, 4.

**Publisher's Notes.** Acts 1992 (1st Ex. Sess.), No. 8, § 1, provided: "The purpose of this act is to amend Arkansas Code § 8-6-610 [§ 8-6-609] to allow for administrative costs on a matching basis and to provide authority for the Department to develop regulations therefor."

**Amendments.** The 2011 amendment rewrote (c)(1)(D) and (c)(1)(E); added (c)(1)(F) and (c)(1)(G); in (c)(2), substituted “unless the regional solid waste management board determines and sub-

mits the rationale for the determination along with the grant application to the department” for “unless the department determines”; and added present (d)(2)(A)(i)(b).

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

### 8-6-610. Rules and regulations — Conditions imposed upon grant recipients.

(a) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules and regulations necessary to implement this subchapter, including without limitation:

- (1) Collecting fees;
- (2) Determining grant eligibility;
- (3) Setting priorities for the administration of this subchapter; and
- (4) Requiring reimbursement of grant moneys for failure to abide by the terms of this subchapter.

(b)(1)(A) The rules shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

(B) At a minimum, the rules shall require that applicants or their agents that receive a grant meet the following conditions of the grant program as set forward in the department’s regulations.

(2) The applicants shall:

(A) Have a solid waste management plan on file with the Arkansas Department of Environmental Quality within the first year following the date of the grant awarded by the department;

(B) Actively develop a recycling program, as outlined in the grant application, in the three (3) years following the date of the grant award by the department;

(C) Actively seek to market or reuse the materials diverted under the recycling program from deposition in landfills in the period of three (3) years following the date of the grant award by the department;

(D)(i) In the case of mechanical processing equipment or facilities, provide information that reasonably demonstrates that existing mechanical processing equipment or facilities are not serving or could not serve the relevant area.

(ii) An applicant wishing to obtain a grant to purchase mechanical processing equipment or facilities with grant funds must describe in detail the equipment to be purchased and explain why the applicant has concluded that such equipment is not available in the private sector; and



(E)(i) The applicant shall insert in a newspaper of general circulation in the area affected a notice describing the applicant's grant request and soliciting written comments from the public.

(ii) The comment period shall last for thirty (30) days after the date of publication and may be concurrent with an application submission to the department.

(iii) Copies of comments submitted under subdivision (b)(2)(E)(i) of this section shall be forwarded to the department.

(c) If, within a three-year period beginning on the date that the department awards the grant, the grantee does not meet the conditions of the grant prescribed under subsection (b) of this section and the regulations promulgated under authority of this chapter, the department may order the grantee to reimburse the department for up to one hundred percent (100%) of the grant according to the following schedule:

(1) If the grantee fails to meet the conditions in the first year after the grant award, the grantee may be required to reimburse one hundred percent (100%) of the grant;

(2) If the grantee fails to meet the conditions in the second year after the grant award, the grantee may be required to reimburse sixty-six percent (66%) of the grant; or

(3) If the grantee fails to meet the conditions in the third year after the grant award, the grantee may be required to reimburse thirty-three percent (33%) of the grant.

**History.** Acts 1989, No. 849, § 10; 1989, No. 934, § 10; 1991, No. 749, § 6; 1997, No. 179, § 4; 2001, No. 70, § 2; 2011, No. 819, § 5.

**Amendments.** The 2011 amendment substituted "House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor" for "House and Senate Interim

Committees on Public Health, Welfare, and Labor" in present (b)(1)(A); deleted "or incinerators" following "landfills" in (b)(2)(C); deleted "Thirty (30) days prior to submitting a grant application to the department" at the beginning of present (b)(2)(E)(i); inserted (b)(2)(E)(ii); and rewrote (b)(2)(E)(iii).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

### 8-6-611. Computation of fees.

For the purpose of determining landfill disposal or transportation fees under this subchapter, the landfill permittees and transporters shall use the dry weight basis in determining the fee for disposal or transportation of ash.

**History.** Acts 1991, No. 751, § 5; 1993, No. 1127, § 3.

**8-6-612. Landfill disposal fees to support a computer and electronic equipment recycling program.**

(a)(1) Except as provided in subsection (b) or (d) of this section, there is imposed on each landfill permittee a landfill disposal fee of:

(A) Fifteen cents (15¢) for each uncompacted cubic yard of solid waste; and

(B) Thirty cents (30¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar (\$1.00) for each one (1) ton of solid waste received at the landfill.

(b) The following are exempt from payment of fees under subsection (a) of this section:

(1) A solid waste transporter as defined in § 8-6-603; and

(2) A landfill permittee that is a private industry that bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

(c) Fees imposed under this section shall be collected in the same manner as in § 8-6-607(1) and (2) and shall be special revenues deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund for support of the computer and electronic equipment recycling program.

(d) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the landfill disposal fee under this section.

**History.** Acts 2007, No. 512, § 2; 2009, No. 189, §§ 3, 4; 2011, No. 602, § 1.

**A.C.R.C. Notes.** Acts 2010, No. 213, § 44, provided: "LANDFILL DISPOSAL FEES.

"(a)(1) The collection of all landfill disposal fees that are or were to be collected under § 8-6-612 shall be suspended until July 1, 2011, and collection of the following landfill disposal fees shall be substituted until that date:

"(A) Each landfill permittee shall pay fifteen cents (15¢) per uncompacted cubic yard of solid waste; and

"(B) Each landfill permittee shall pay thirty cents (30¢) per compacted cubic yard of solid waste received at the landfill.

"(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar (\$1.00) per ton of solid waste received at the landfill.

"(b) The following shall be exempt from payment of fees under subsection (a) of this section:

"(1) A solid waste transporter under § 8-6-603(10); and

"(2) A landfill permittee where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

"(c) The fees under subdivisions (a) of this section shall be:

"(1) Collected in the same manner as stated in § 8-6-607(1) and (2); and

"(2) Deemed to be special revenues to be deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund for support of the computer and electronic recycling program.

"(d) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the fees under subsection (a) of this section."

Acts 2011, No. 957, § 43, provided: "LANDFILL DISPOSAL FEES.

"(a)(1) The collection of all landfill dis-

posal fees that are or were to be collected under § 8-6-612 shall be suspended until July 1, 2012, and collection of the following landfill disposal fees shall be substituted until that date:

“(A) Each landfill permittee shall pay fifteen cents (15¢) per uncompacted cubic yard of solid waste; and

“(B) Each landfill permittee shall pay thirty cents (30¢) per compacted cubic yard of solid waste received at the landfill.

“(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar (\$1.00) per ton of solid waste received at the landfill.

“(b) The following shall be exempt from payment of fees under subsection (a) of this section:

“(1) A solid waste transporter under § 8-6-603(10); and

“(2) A landfill permittee where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry.

“(c) The fees under subdivisions (a) of this section shall be:

“(1) Collected in the same manner as stated in § 8-6-607(1) and (2); and

“(2) Deemed to be special revenues to be deposited into the State Treasury to the credit of the Solid Waste Management and Recycling Fund for support of the computer and electronic recycling program.

“(d) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the fees under subsection (a) of this section.”

**Amendments.** The 2009 amendment inserted “or (d)” in (a)(1); and added (d).

The 2011 amendment substituted “subsection (b) or (d)” for “subsection (c) or (d)” in (a)(1); substituted “Fifteen cents (15¢)” for “Twenty-five cents (25¢)” in (a)(1)(A); substituted “Thirty cents (30¢)” for “Forty-five cents (45¢)” in (a)(1)(B); and rewrote (b).

### **8-6-613. Computer and electronic equipment recycling program.**

(a) A program for the recycling of computer and electronic equipment is created.

(b) The General Assembly finds that:

(1) Computer and electronic equipment solid waste are among the fastest growing and most toxic segments of Arkansas’s solid waste stream; and

(2) There are recycling options to address this problem, and Arkansas solid waste districts and local governments and their delegated authorities and agents should develop solid waste management plans, programs, and facilities that integrate computer and electronic equipment recycling as a functional part of the solid waste management system.

(c) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules necessary to implement an effective computer and electronic equipment recycling program.

**History.** Acts 2007, No. 512, § 2.

### **8-6-614. Effective date.**

The disposal fees authorized in § 8-6-612 shall not be collected until the Landfill Post-Closure Trust Fund reaches twenty-five million dollars (\$25,000,000).



**History.** Acts 2007, No. 512, § 2.

## SUBCHAPTER 7 — REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND BOARDS

### SECTION.

- 8-6-701. Purpose — Legislative findings — Construction.
- 8-6-702. Definitions.
- 8-6-703. Creation of districts and boards — Members of boards.
- 8-6-704. Boards — Powers and duties.
- 8-6-705. Needs assessments.
- 8-6-706. Solid waste landfill and transfer station permits.
- 8-6-707. Creation of new regional districts.
- 8-6-708. Procedures and regulations.
- 8-6-709. Agreements implementing subchapter.
- 8-6-710. Solid waste management responsibility.
- 8-6-711. District solid waste management system.

### SECTION.

- 8-6-712. Regulation of solid waste disposal.
- 8-6-713. Restriction on local government bonds and pledges.
- 8-6-714. Rents, fees, and charges.
- 8-6-715. Eminent domain.
- 8-6-716. Regional needs assessment.
- 8-6-717. Solid waste management plan.
- 8-6-718. Waste tire collection center.
- 8-6-719. Regional composting program.
- 8-6-720. Opportunity to recycle — Recyclable materials collection centers.
- 8-6-721. Licensing haulers of solid waste.
- 8-6-722. Penalties.
- 8-6-723. Alternative formation of original districts.
- 8-6-724. Regional standards.

**A.C.R.C. Notes.** Acts 1989, No. 870, § 6, provided: "Until January 31, 1991, no existing landfill shall expand its service area outside of the District in which it is located. Existing landfills that currently serve outside of their respective Districts shall not increase the total amount of solid waste originating from outside their Districts by more than twenty percent (20%) of the total solid waste received at such facility. No new landfill shall be allowed to receive solid waste outside the boundaries of the District in which it is located until after January 31, 1991. No new applications for landfill permits seeking to dispose of solid waste originating outside of the district created hereunder, or that propose to dispose of solid waste originating from outside such district, shall be accepted or processed by the Commission or a regional solid waste planning board, unless such applications were pending before the Department of Pollution Control and Ecology as of March 1, 1989. All landfill permit applications shall specify the service areas which the landfill will serve under the permit."

Acts 1989, No. 870, § 12, provided: "(a) There is hereby created the Arkansas Solid Waste Fact Finding Task Force. The

task force is charged with the duty to collect data and report upon the sociological, economic, environmental, political and public health ramifications of solid waste management practices currently in effect in Arkansas, and policies and practices which should be adopted to address problems discovered. The task force's research shall include, but not be limited to, the available means of transport for solid waste materials, the distribution of landfill capacity throughout the State, the closure and future maintenance of landfills, and current procedures and recurring problems regarding siting of landfills.

"(b) The task force shall have ten (10) voting members and two (2) ex officio members. The composition of the Committee shall be as follows:

"(1) Four (4) members shall be appointed by the Governor to represent each of the four (4) Arkansas Congressional districts, one of which shall be the chairman;

"(2) Two (2) members shall be appointed by the Governor with one (1) member being a mayor of an Arkansas city and one (1) member being a county judge;

"(3) Two (2) members shall be appointed by the President Pro Tem of the Senate;

"(4) Two (2) members shall be appointed by the Speaker of the House of Representatives;

"(5) The Director of the Department of Pollution Control and Ecology shall serve as an ex officio member and the Director of the Arkansas Geological Commission or his designee shall serve as an ex officio member.

"(c) The initial meeting of the task force shall take place before May 1, 1989. The initial meeting shall be called at a time and place of the choosing of the chairman. The task force shall report its findings and recommendations, including any proposed legislation, to the Seventy-Eighth General Assembly of the State of Arkansas on or before January 1, 1991. The task force shall terminate upon the filing of its final report with the General Assembly.

"(d) Members of the task force shall serve without compensation and shall receive their actual and necessary traveling expenses and meals incurred in the performance of their duties as members of the task force. All disbursements of funds for task force expenses shall be at the rate and under the same guidelines as those expenses for state employees. The Director is authorized to pay the expenses of the task force from funds appropriated to his department for conference fees and travels or from other funds appropriated specifically for the purpose of paying the expenses of the task force."

Acts 1989, No. 870, § 15, provided: "The provisions of this act shall be in addition and supplemental to all other laws of Arkansas now in effect pertaining to solid waste and solid waste management and regulation, and shall repeal only such laws or parts of laws as may be specifically in conflict with this act."

Acts 1989, No. 870, § 6, as amended by Acts 1991, No. 9, § 1, provided: "Until March 2, 1991, no existing landfill shall expand its service area outside of the District in which it is located. Existing landfills that currently serve areas outside of their respective Districts shall not increase the total amount of solid waste originating from outside their Districts by more than twenty percent (20%) of the total solid waste received at such facility. No new landfill shall be allowed to receive

solid waste outside the boundaries of the District in which it is located until after March 2, 1991. No new applications for landfill permits seeking to dispose of solid waste originating outside of the district created hereunder, or that propose to dispose of solid waste originating from outside such district, shall be accepted or processed by the Commission or a regional solid waste planning board, unless such applications were pending before the Department of Pollution Control and Ecology as of March 1, 1989."

Acts 1991, No. 752, § 5, provided: "Any solid waste management system operating under the authority of § 14-233-101 et seq. with five (5) or more counties currently being served by these authorities upon the passage of this act shall, upon notification to the regional board and the Commission, shall be designated a regional solid waste management district. The governing body of the district shall be as determined by the authority by resolution."

References to "this chapter" in subchapters 1-5 and 8-10 may not apply to this subchapter which was enacted subsequently.

**Publisher's Notes.** Acts 1989, No. 870 and Acts 1991, No. 319 were held to be unconstitutional as applied to solid wastes originating outside the State of Arkansas in *Southeast Ark. Landfill, Inc. v. Arkansas Dep't of Pollution Control and Ecology*, 981 F.2d 372 (8th Cir. 1992).

Acts 1991, No. 752, § 1, provided: "The Arkansas General Assembly makes the following findings:

"(1) The present landfill capacity in the State of Arkansas is inadequate and is at or near the critical point;

"(2) As of July 30, 1990, the capacity in Arkansas was about 4.3 years of landfill life for 63 municipal solid waste landfills;

"(3) Adequate solid waste management planning is not possible at the present time because of the lack of accurate statistics on industrial landfill capacity and use; and

"(4) The state has taken important steps to encourage recycling but a much greater effort is necessary to assist in addressing out solid waste management needs."

**Effective Dates.** Acts 1989, No. 870, § 16: Mar. 22, 1989. Emergency clause provided: "It is hereby found and deter-



mined by the Seventy-Seventh General Assembly of the State of Arkansas that the current system regulating solid waste in Arkansas does not foster long-range planning or efficient allocation of the State's solid waste resources; that some areas are facing serious shortages of capacity to the point of crisis and other areas have excess capacity to the point it wastes resources; and therefore to conserve precious financial resources and to avoid unnecessary land and water pollution, a system of regional solid waste planning should be implemented. Therefore, in order to address this serious environmental problem, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 9, § 5: Jan. 31, 1991. Emergency clause provided: "The present moratorium on out-of-state solid waste being received into landfills of this state expires January 31, 1991; this act extends that moratorium until March 2, 1991; that unless this act goes into effect immediately the existing law will expire and this law will not go into effect until after March 2, 1991. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 752, § 9: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in siting landfill facilities and the difficulties of financing public waste recovery and disposal facilities at the local level. It is found that regional solid waste authorities are needed to expedite the financing, siting, and operation of new waste management facilities in order that the health and welfare of the citizens of Arkansas be insured and that the state's environment be protected. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 619, § 8: Mar. 22, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that expediting the transfer of solid waste between solid waste management districts will significantly benefit the districts, the citizens of Arkansas, and the environment; and this act is necessary for the immediate preservation of the public peace, health and safety; therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 341, § 5: Mar. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the law concerning the transfer and receipt of solid waste in the State of Arkansas is inadequate. This bill will expand the ability of Regional Solid Waste Management Districts to seek the effective disposal of solid waste. Providing these agreements will enhance districts' ability to manage solid waste in a more cost-effective manner. Immediate action on this bill is necessary to provide uninterrupted solid waste disposal services throughout the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 631, § 5: Mar. 16, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the proper siting of transfer stations is essential to achieve the goals of efficient, effective, and environmentally sound regional solid waste management and planning. It is found that the regional solid waste management districts and boards must have the authority to evaluate, manage and coordinate the siting, location, and operation of transfer stations in order that the health and welfare of the citizens of Ar-



kansas be ensured and the state's environment be protected. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2011, No. 209, § 3: Mar. 8, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unintended consequences of court action regarding the wording of Arkansas Code § 8-6-714, have been curtailed or discontinued a main source of funding for many of the programs of the solid waste management

districts; that reinstatement of these funding sources and the immediate collection of these fees will put the Solid Waste Management District's budgets back on track; and that this act is immediately necessary because no other funding source in state government currently exists to continue these programs of the Solid Waste Management Districts to provide services necessary to the health and welfare of Arkansas citizens and to safeguard the state's fragile ecological health and well being. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### RESEARCH REFERENCES

**Ark. L. Rev.** Note, In re Southeast Arkansas Landfill and the Commerce Clause: Welcome to the Arkansas Depository for Solid Waste, 46 Ark. L. Rev. 1027.

**U. Ark. Little Rock L.J.** Note, Environmental Law — Conservation — New Jersey Mandatory Statewide Source Separation and Recycling of Solid Waste Act, 11 U. Ark. Little Rock L.J. 733.

Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

Legislative Survey, Environmental Law, 16 U. Ark. Little Rock L.J. 111.

### CASE NOTES

#### Constitutionality.

Those portions of Act 870 of 1989 and Act 319 of 1991 which discriminate on their face against solid waste originating outside the State of Arkansas violate the Commerce Clause (U.S. Const., Art. 1, § 8) and are thus unconstitutional. South-

east Ark. Landfill, Inc. v. Arkansas Dep't of Pollution Control & Ecology, 981 F.2d 372 (8th Cir. 1992).

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep't of Pollution Control & Ecology, 137 B.R. 735 (E.D. Ark. 1992).

### 8-6-701. Purpose — Legislative findings — Construction.

The purpose of this subchapter is to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. The current system, relying upon solid waste management by individual counties and municipalities, has fostered present conditions in which certain areas of the state are facing

capacity shortages of crisis proportions, while others experience a surfeit of capacity with individual disposal facilities which cannot muster the resources for environmentally responsible operators. Given these disparate environmental and economic concerns, the General Assembly concludes that regional solid waste management and planning, under the oversight of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission, is essential to address the imminent and future needs of the state. The terms and obligations of this subchapter shall be liberally construed so as to achieve remedial intent.

**History.** Acts 1989, No. 870, § 1; 1991, No. 752, § 2; 1999, No. 1164, § 70.

### **8-6-702. Definitions.**

As used in this subchapter:

- (1) "Board" or "regional board" means a regional solid waste management board established pursuant to this subchapter;
- (2) "Commission" means the Arkansas Pollution Control and Ecology Commission;
- (3) "Department" means the Arkansas Department of Environmental Quality;
- (4) "Director" means the Director of the Arkansas Department of Environmental Quality;
- (5) "Disposal site" means any place at which solid waste is dumped, accepted, or disposed of for final disposition by landfilling, incinerating, composting, or any other method;
- (6) "District" means a regional solid waste management district;
- (7) "Interested party" means the director or his or her designee, the board, the person making application to the board, or any person submitting written comments on an application within the public comment period;
- (8) "Landfill" means a permitted landfill under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;
- (9) "Materials in the recycling process" means ferrous and nonferrous metals diverted or removed from the solid waste stream so that they may be reused, as long as such materials are processed or handled using reasonably available processing equipment and control technology as determined by the director, taking cost into account, and a substantial amount of the materials are consistently utilized to manufacture a product which otherwise would have been produced using virgin material;
- (10) "Recyclable materials" or "recyclables" means those materials from the solid waste stream that can be recovered for reuse in present or reprocessed form;
- (11) "Recyclable materials collection center" or "collection center" means a facility which receives or stores recyclable materials prior to timely transportation to material recovery facilities, markets for recycling, or disposal;

(12) "Recycling" means the systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;

(13) "Solid waste" means all putrescible and nonputrescible wastes in solid, semisolid, or liquid form, including, but not limited to, yard or food waste, waste glass, waste metals, waste plastics, wastepaper, waste paperboard, and all other solid and semisolid wastes resulting from industrial, commercial, agricultural, community, and residential activities, but does not include materials in the recycling process as the same are defined herein;

(14) "Solid waste management system" shall have the same meaning as provided in § 8-6-203;

(15) "Source separation" means the act or process of removing a particular type of recyclable material from the solid waste stream at the point of generation or at a point under control of the generator for the purpose of collection and recycling; and

(16) "Yard waste" means grass clippings, leaves, and shrubbery trimmings.

**History.** Acts 1989, No. 870, § 2; 1991, No. 752, § 2; 1993, No. 479, § 1; 1999, No. 1164, § 71.

### **8-6-703. Creation of districts and boards — Members of boards.**

(a)(1)(A) The eight (8) regional solid waste planning districts created by Acts 1989, No. 870, and each solid waste service area created pursuant to Acts 1989, No. 870, are renamed regional solid waste management districts.

(B) Each district shall be governed by a regional solid waste management board.

(2) The boundaries of a regional solid waste management district may be modified and new regional solid waste management districts may be created pursuant to § 8-6-707.

(b)(1) Each regional solid waste management board shall be composed of representatives of:

(A) The counties within the district;

(B) All cities of the first class;

(C) All cities with a population over two thousand (2,000) according to the most recent federal decennial census;

(D) The largest city of each county within the district; and

(E) Any city that holds a position on any regional solid waste management board on or after January 1, 2010.

(2) The county judge of each county within the district and the mayor of each city entitled to a representative in the district shall serve on the board, unless the county judge or mayor elects instead to appoint a member as follows:

(A) The county judge, with confirmation by the quorum court of each county within the district, shall appoint one (1) member to the board; and



(B) The mayor, with confirmation by the governing body of each city entitled to a representative in the district, shall appoint one (1) member.

(c)(1) Each board shall have a minimum of five (5) members.

(2) If the number of members serving under subsection (b) of this section is less than five (5), additional members necessary to make the total number equal five (5) shall be appointed by mutual agreement of the other board members and shall represent the general public within the district.

(3)(A)(i) Appointed regional board members shall serve for staggered terms of two (2) years.

(ii) Provided, however, that all members appointed pursuant to subsection (b) of this section shall serve at the pleasure of the appointing body.

(B) Each appointed board member shall be eligible for a maximum of two (2) terms or four (4) years total.

(4) Vacancies shall be filled for any unexpired term of an appointed member in the same manner as provided in subsection (b) of this section and subdivision (c)(2) of this section.

(5)(A) A majority of the membership of the board in person or represented by proxy shall constitute a quorum.

(B) A majority vote of those members present shall be required for any action of the board.

(6) Each board shall annually select a chair.

**History.** Acts 1989, No. 870, § 3; 1991, No. 752, §§ 2, 3; 2003, No. 215, § 1; 2011, No. 884, § 1.

**Publisher's Notes.** Acts 1989, No. 750, § 3, provided, in part: "There are hereby created eight (8) Regional Solid Waste Planning Districts and eight (8) Regional Solid Waste Planning Boards whose respective jurisdictions shall correspond to the boundaries of the Planning and Development Districts established pursuant to Arkansas Code § 14-166-202."

The terms of the general public members of each regional solid waste management board are arranged so that one (1) term expires every year.

Acts 1991, No. 752, § 2, provided in part, that the initial appointed members of the board would draw lots to determine terms of appointment so that, as nearly as possible, the terms of an equal number of members will expire each year.

Acts 1991, No. 752, § 3 provided, in part: "(a) A county shall not be included in the boundaries of more than one (1) regional solid waste management district

formed from a regional solid waste planning district created pursuant to this act.

"(b) The members of regional solid waste planning boards and solid waste service area boards shall serve as board members of their respective regional solid waste management districts until sixty (60) days after the effective date of this act.

"(c) New members shall be appointed to the regional solid waste management boards pursuant to this act. The terms of the new appointees to the regional solid waste management boards shall begin sixty (60) days after the effective date of this act.

"(d) The first meeting of the new board members shall be held within ninety (90) days after the effective date of this act. At the initial meeting the members shall draw lots to determine their terms of appointment so that, as nearly as possible, the terms of an equal number of members will expire each year."

**Amendments.** The 2011 amendment inserted (b)(1)(E).

**8-6-704. Boards — Powers and duties.**

(a) The regional solid waste management boards have the following powers and duties:

(1) To collect data, study, and initially evaluate the solid waste management needs of all localities within their districts, as provided in § 8-6-716, and to publish their findings as a regional needs assessment;

(2) To evaluate on a continuous basis the solid waste needs of their districts and thereby update the regional needs assessments at least biennially;

(3) To formulate recommendations to all local governments within their districts on solid waste management issues and to formulate plans for providing adequate solid waste management;

(4) To issue or deny certificates of need to any applicant for a solid waste disposal facility permit within their districts with the exception of permits for landfills when a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character;

(5) To petition the Director of the Arkansas Department of Environmental Quality to issue, continue in effect, revoke, modify, or deny any permit for any element of a solid waste management system located within a district based on compliance or noncompliance with the solid waste management plan of the district;

(6) To adopt rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as are reasonably necessary to assure public notice and participation in any findings or rulings of the boards and to administer the duties of the boards;

(7) To establish programs to encourage recycling;

(8) To adopt official seals and alter them at pleasure;

(9) To maintain offices at such places as they may determine;

(10) To sue and be sued in their own names and to plead and be impleaded;

(11) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of a district, including, but not limited to, entering into contracts and agreements with private entities for provision of services;

(12) To carry out all other powers and duties conferred by this subchapter and § 8-6-801 et seq.;

(13)(A) To enter into agreements with another solid waste management district to allow a district or any person within that district to transfer solid waste into another district.

(B) However, notice of all such authorizations shall be submitted to the Arkansas Department of Environmental Quality within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update; and

(14)(A) To authorize a disposal facility within a district to accept the receipt of solid waste from an adjoining district upon request by the generator of that solid waste, provided that the request specifies the

disposal facility and the nature and estimated annual volume of solid waste to be received.

(B) However, notice of all such authorizations shall be submitted to the department within thirty (30) days and shall be incorporated into the regional needs assessment in its next regular update.

(b)(1) The regional solid waste management boards may:

(A) Apply for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate any portion of a solid waste management system and to obtain, hold, and use licenses, permits, certificates, or approvals in the same manner as any other person or operating unit of any other person;

(B) Employ such engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other consultants and employees as may be required in the judgment of the district and fix and pay their compensation from funds available to the district therefor;

(C) Purchase all kinds of insurance, including, but not limited to, insurance against tort liability, business interruption, and risks of damage to property; and

(D) Employ an environmental officer who may:

(i) Inspect all landfills;

(ii) Inspect other solid waste facilities;

(iii) Inspect waste haulers and other vehicles;

(iv) Ensure compliance with all district regulations;

(v) Collect evidence of noncompliance and present the evidence to the prosecuting attorney; or

(vi) Issue citations for the violation of any district regulation.

(2)(A) If a regional solid waste management board employs an environmental officer under this subsection, then the environmental officer may complete the training course for law enforcement officers at the Arkansas Law Enforcement Training Academy.

(B) After satisfactory completion of the training course, the environmental officer shall be a law enforcement officer.

(C) After satisfactory completion of the training course, the environmental officer may:

(i) Carry firearms;

(ii) Execute and serve a warrant or other processes issued under the authority of the district and related to violations of district regulations; and

(iii) Make arrests and issue citations for violations of district regulations regarding environmental protection.

(c) The regional solid waste management boards shall adopt and follow county purchasing procedures, as provided in § 14-22-101 et seq., as the approved purchasing procedures for the districts.

(d)(1) Each regional solid waste management board shall procure an annual financial audit of the district. Such audits shall be conducted following each board's fiscal year end. Regional solid waste management funds which are subject to audit in conjunction with a single audit



performed consistent with Governmental Auditing and Reporting Standards are not required to have a separate audit.

(2)(A) Each district shall choose and employ accountants in good standing with the Arkansas State Board of Public Accountancy to conduct these audits in accordance with Governmental Auditing and Reporting Standards issued by the Comptroller of the Currency of the United States.

(B) The regional solid waste management district shall pay for such audits from their administrative moneys.

(3) Each audit report and accompanying comments and recommendations shall be reviewed by the appropriate regional solid waste management board.

(4) Copies of each audit report of a regional solid waste management district shall be filed with the department and with the Division of Legislative Audit. In addition, one (1) copy of the audit report shall be kept for public inspection with the books and records of the district.

(5) Failure to provide a full and complete audit report, as required by this subchapter, shall prohibit future distribution of revenue from funding programs that are administered by the department unless otherwise authorized by the director.

**History.** Acts 1989, No. 870, § 4; 1991, No. 752, § 2; 1993, No. 619, § 1; 1995, No. 163, § 1; 1997, No. 398, § 1; 1999, No. 341, § 1; 2005, No. 1289, § 1; 2007, No. 209, §§ 1, 2; 2009, No. 1199, § 8.

**A.C.R.C. Notes.** Acts 1989, No. 870, § 5, provided: "(a) No later than January 31, 1991, each Board shall prepare a Regional Needs Assessment evaluating the solid waste management needs within their Districts. This Regional Needs Assessment shall be submitted to the Department for review and approval. The assessment shall include, at the minimum, the following:

"(1) An evaluation of the amount of solid waste generated within the District and the amount of remaining disposal capacity, expressed in years, at the solid waste disposal facilities within the District that are permitted under the Arkansas Solid Waste Management Act, Arkansas Code 8-6-201 et seq.

"(2) An evaluation of the needs of all localities within the district as to the adequacy or inadequacy of solid waste collection, transportation and disposal within those localities;

"(3) An evaluation and balancing of the environmental, economic and other relevant factors which would be implicated by acceptance of solid waste from beyond the boundaries of the District.

"(b) The Board shall update their Regional Needs Assessments, at the minimum, on a biennial basis. At a time not later than five (5) years before the disposal capacity in the respective regions reach their projected capacity, the Boards shall seek request for proposals to increase the Districts projected capacity for solid waste disposal within the District according to their Regional Needs Assessments. No district shall receive solid waste from beyond its boundaries when projected capacity within the district is less than five (5) years.

"(c) However, any landfill serving a limited area of a District shall not be required to increase their service area to accommodate the needs of the District. If a landfill facility elects to maintain a limited service area within a District, the Board for the District shall adjust the Regional Needs Assessment of the overall District until a facility chooses otherwise."

**Amendments.** The 2007 amendment substituted "boards have" for "boards shall have" in (a), deleted "the Arkansas Pollution Control and Ecology Commission or" following "To petition" in (a)(5), substituted "rules under" for "such rules or regulations pursuant to" in (a)(6); and inserted "and follow" in (c).

The 2009 amendment substituted "regional" for "district" in (13)(B) and (14)(B).

**8-6-705. Needs assessments.**

(a) All needs assessments required by this subchapter are subject to review and approval for completeness by the Arkansas Department of Environmental Quality.

(b) Failure to provide complete assessments as required by this subchapter may provide the department with grounds to initiate enforcement actions against the regional boards or their component governmental entities. Pursuant to established administrative procedures, sanctions may be imposed, including, but not limited to, denial, discontinuation, or reimbursement of any grant funding administered by the department to a district or any of its component governmental entities.

(c) The department may award grants to the districts for the development of the initial regional needs assessments, for the biennial updates, and for any other update required by the law.

**History.** Acts 1989, No. 870, § 7; 1991, No. 752, § 2; 1999, No. 1164, § 72.

**8-6-706. Solid waste landfill and transfer station permits.**

(a)(1) Before an application for a permit is submitted to the Arkansas Department of Environmental Quality, an applicant for a solid waste landfill permit or a transfer station permit shall obtain a certificate of need from the regional solid waste management board that has jurisdiction over the proposed site, with the exception of permits for landfills when a private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) The department may deny any permit based upon the denial of a certificate of need by any regional board.

(b)(1) Applicants for a solid waste landfill permit or transfer station permit must petition the regional board with jurisdiction over the proposed site for a certificate of need in accordance with procedures adopted by the regional board.

(2) The applicant's petition must establish, at a minimum, that the proposed disposal facility:

(A) Is consistent with the regional planning strategy adopted by the regional board in the regional needs assessment or the regional solid waste management plan;

(B) Does not conflict with existing comprehensive land use plans of any local governmental entities;

(C) Does not disturb an archaeological site as recognized by the Arkansas Archaeological Survey or a rare and endangered species habitat as recognized by the Arkansas State Game and Fish Commission or the United States Fish and Wildlife Service;

(D) Will not adversely affect the public use of any local, state, or federal facility, including, but not limited to, parks and wildlife management areas;

(E) Does not conflict with the requirements of state or federal laws and regulations on the location of disposal facilities;

(F) If located in the hundred-year floodplain, does not restrict the flow of the hundred-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health or the environment; and

(G) If the transfer station proposes to transfer waste outside of the district in which it is located, the petition shall also contain documentation that the district to which the waste will be transferred has been notified and that the regional board of that district has approved the receipt of the waste. This provision shall not apply if the waste is being transported for disposal outside the geographical limits of this state.

(c) Any interested party to a certificate of need determination by a regional board may appeal the decision to the Director of the Arkansas Department of Environmental Quality pursuant to procedures adopted by the Arkansas Pollution Control and Ecology Commission. The director may issue a permit despite the denial of a certificate of need if the director finds upon appeal that the decision of the regional board was not supported by substantial evidence.

(d) After notice and a public hearing to be held by the regional board in the county where the proposed landfill or transfer station is to be located, a certificate of need shall be issued or denied by the regional board based upon an evaluation of:

(1) The information provided by the applicant in the petition for a certificate of need;

(2) The requirements and considerations of any needs assessments prepared pursuant to this section;

(3) The location of the applicant's proposed landfill or transfer station based on the district's needs and its highway and road system;

(4) For landfill permits, the regional board shall consider the need for the landfill based upon the district's excess projected capacity which is currently permitted for operation, but in no event shall the district's excess permitted projected capacity exceed thirty (30) years, unless the city or county government within whose jurisdiction the proposed landfill is located authorizes through adoption of a resolution approval of the excess capacity;

(5) Any solid waste management system plans promulgated and approved pursuant to §§ 8-6-211 and 8-6-212 to the extent these plans conform to an overall regional planning strategy;

(6) A detailed history of the applicant's record and that of the stockholders and officers with respect to violations of environmental laws and regulations of the United States or any state or any political subdivision of any state; and

(7) Any procedures adopted by the regional board for issuance of a certificate of need.



(e) All landfill permit applications shall specify the service areas which the landfill will serve under the permit.

(f) All transfer station permit applications shall specify the service areas which the transfer station shall serve under the permit and shall also specify the facility to which waste from the transfer station will be transferred.

**History.** Acts 1989, No. 870, §§ 6, 8; 1991, No. 9, § 1; 1991, No. 752, § 2; 1999, No. 631, § 1; 1999, No. 1164, § 73; 2003, No. 672, § 1; 2007, No. 208, § 1.

**A.C.R.C. Notes.** As enacted, the lan-

guage "From on and after January 31, 1991" appeared at the beginning of (a).

**Amendments.** The 2007 amendment rewrote (a)(1).

### CASE NOTES

#### In General.

Order approving landfill's application to expand was upheld; the Arkansas Pollution Control and Ecology Commission concluded that the Arkansas Tri-County Solid Waste District Board's denial of a certifi-

cate of need due to the geology of the area was improper under subsection (d) of this section. *Tri-County Solid Waste Dist. v. Ark. Pollution Control & Ecology Comm'n*, 365 Ark. 368, 230 S.W.3d 545 (2006).

### 8-6-707. Creation of new regional districts.

(a)(1)(A) After notification of the appropriate regional board or boards, the Arkansas Pollution Control and Ecology Commission may designate a county or counties within each district or counties within two (2) or more districts as a new regional solid waste management district pursuant to the limitations of this section.

(B) New regional solid waste management districts shall be designated for purposes which address local exigencies, needs, and other requirements of this subchapter.

(C) A regional solid waste management district shall only be composed of whole county jurisdictions, and each district shall contain more than one (1) county unless that county has a population of at least fifty thousand (50,000) according to the latest decennial census.

(2) Commission approval of regional solid waste management district boundaries shall be sought and obtained pursuant to administrative procedures promulgated by the commission.

(b)(1) Counties and municipalities included in a new or revised district shall cease to be members of any other district.

(2) The term of a regional board member representing a county or municipality shall immediately expire upon the inclusion of the county or municipality within a new regional solid waste management district.

(c) After notification of the appropriate regional boards, the commission, upon the request of a county or district, may transfer a county into an existing district.

**History.** Acts 1989, No. 870, § 9; 1991, No. 752, § 2; 1991, No. 786, § 7.

**Publisher's Notes.** The terms of the general public members of each regional

solid waste management board are arranged so that one (1) term expires every year.

Pursuant to this section, Acts 1991, No. 786, § 7, which amended former subdivision (b)(2)(A) of this section, is superseded by Acts 1991, No. 752, § 2.

Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts

passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

### **8-6-708. Procedures and regulations.**

The Arkansas Pollution Control and Ecology Commission is authorized to prescribe procedures and regulations:

(1) To guide the initial and continued organization and operation of the respective boards in accordance with the purposes of this subchapter and § 8-6-801 et seq.;

(2) To assure public notice and participation prior to adoption of regional needs assessments, findings, or reports made by the boards;

(3) To defray some of the costs of the administration of this subchapter, including, but not limited to, inspections and technical review of submissions required by this subchapter by setting graduated surcharges upon any waste stream increase in excess of ten percent (10%) as a result of receipt of solid waste from outside the district; and

(4) To require prompt compliance with the requirements of this subchapter and § 8-6-801 et seq.

**History.** Acts 1989, No. 870, § 10; 1991, No. 752, § 2.

### **8-6-709. Agreements implementing subchapter.**

(a) Any regional solid waste management board may enter into agreements for the specific purpose of implementing this subchapter.

(b) Any such agreement shall specify the following:

(1) Its duration;

(2) The precise organization, composition, and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created;

(3) Its purpose or purposes;

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor, provided that such legal entity may incur indebtedness for the lease or purchase of land, equipment, and other expenses necessary to the operation of a solid waste management system or any part thereof;

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) The degree to which the joint or individual plans are drawn in accordance with the regional needs assessments required by this subchapter; and

(7) Any other necessary and proper matters.

**History.** Acts 1989, No. 870, § 11;  
1991, No. 752, § 2.

### **8-6-710. Solid waste management responsibility.**

(a)(1) Each regional solid waste management board shall be the governmental entity primarily responsible for providing a solid waste management system for the district.

(2) The counties and municipalities shall continue to be responsible for solid waste management services within their corporate boundaries until the regional solid waste management board determines in writing that the district is able to assume the solid waste management responsibilities of the municipality or county.

(b) Counties and municipalities in a district may provide a portion of the solid waste management services, such as solid waste pickup, while the board provides other services and has assumed responsibility therefor, such as disposal facilities, in which event, the counties and municipalities shall retain only the responsibility for the system related to the services provided. In performing those retained responsibilities or assisting the board in performing its responsibilities, counties and municipalities shall retain all present legal powers and authority related to those responsibilities, including, but not limited to, power and authority to levy and collect fees and charges. Counties and municipalities may provide additional solid waste management services in excess of those provided by the district at their own expense so long as such services conform to the district solid waste management plan.

**History.** Acts 1991, No. 752, § 2.

### **8-6-711. District solid waste management system.**

(a) A district is authorized to own, acquire, construct, reconstruct, extend, equip, improve, operate, maintain, sell, lease, contract concerning, or otherwise deal in facilities of any nature necessary or desirable for the control, collection, removal, reduction, disposal, treatment, or other handling of solid waste.

(b)(1) A district may elect to acquire the ownership or use of elements of solid waste management systems owned or controlled by municipalities, counties, improvement districts, or sanitation authorities within the district by contract on such terms as are mutually agreed to be necessary, convenient, or desirable.

(2)(A) If the district has elected such acquisition of ownership or use, it shall also have assumed the responsibility associated with that project or element, as contemplated by § 8-6-714.

(B) If the district and the other entity or entities which are parties to the acquisition cannot mutually agree on the fair value to be paid and the method of compensation for the acquired asset, then either



party may have that value and method adjudicated as to fairness by the circuit court having jurisdiction of the district's principal office, in the manner of a declaratory judgment and not in the nature of eminent domain.

(C) The district shall have the discretion to proceed or not to proceed with the acquisition after the declaration is obtained.

(c)(1)(A) A district may elect to seek a permit for a Class I landfill to be owned by the State of Arkansas.

(B) Provided, however, that only one (1) such landfill shall be sited in each of the eight (8) planning and development districts established pursuant to § 14-166-202.

(2) Upon the district's obtaining a permit to operate, ownership interest in said landfill shall be vested with the State of Arkansas through deed or other conveyance.

(d) Existing and operating solid waste facilities within the district shall be incorporated into the district solid waste management plan, or the district shall acquire ownership of that facility in the manner set forth in subsection (b) of this section.

(e) Nothing in this section shall be construed to give a district the power to make an acquisition described herein without the consent of the municipalities, counties, improvement districts, or sanitation authorities involved.

**History.** Acts 1991, No. 752, § 2.

#### RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, Johnson v. to the NIMBY Syndrome, 45 Ark. L. Rev. Sunray Services, Inc.: Possible Solutions 657.

#### 8-6-712. Regulation of solid waste disposal.

(a) A district which has an approved solid waste management plan may:

(1)(A) Require, by regulation or other legal means, that solid waste generated or collected within the boundaries of the district be delivered to a particular project for disposal, treatment, or other handling.

(B) Provided, however, that nothing in this section shall be construed as impairing legal and proper contracts existing on March 26, 1991, under the Arkansas Constitution, or the notes or other evidences of indebtedness incurred pursuant to a revenue bond issued or reissued dependent upon a project involving a stated waste stream which is a contractual condition of said indebtedness;

(2) Prohibit, by regulation or other legal means, the collection of solid waste within the boundaries of the district by persons not properly licensed by the district;

(3)(A) Authorize that a city, county, or any person in an adjoining district may deliver solid waste to a designated landfill within the district for disposal, treatment, or other handling.

(B) Provided, however, that notice of all such authorizations shall be submitted to the Arkansas Department of Environmental Quality within thirty (30) days and shall be incorporated into the district needs assessment in its next regular update;

(4) Provide, by regulation or other legal means, that no person, other than as may be designated by the district, shall engage in the collection or utilization of solid waste within the district which would be competitive with the purposes or activities of the district; and

(5) Covenant in connection with the issuance of bonds, notes, or other evidence of indebtedness to adopt any regulation described in subdivisions (a)(1), (a)(2), and (a)(4) of this section and that any regulation so adopted shall remain in full force and effect and shall be enforced so long as any bonds, notes, or other evidences of indebtedness remain outstanding.

(b) The districts shall issue rules or regulations which are consistent with and in accordance with but no more restrictive than all applicable environmental protection performance standards adopted by state law or incorporated by reference from federal law.

(c)(1) Nothing in this section shall prohibit the disposal of solid waste generated by a private industry in a permitted landfill where the private industry bears the expense of operating and maintaining the landfill solely for the disposal of waste generated by the industry or wastes of a similar kind or character.

(2) Nothing in this section shall prohibit the collection or disposal of solid waste by a municipality with an existing permitted landfill with a twenty-five-year capacity as of January 1, 1991, where the city bears the expense of operating and maintaining the landfill and the landfill complies with United States Environmental Protection Agency and department regulations.

(3) Nothing in this section shall prohibit a municipality or county from constructing or operating a facility or project to process and market recyclable materials for use as fuel.

(d) Furthermore, nothing in this subchapter shall prohibit the disposal of dead animal carcasses through means which are otherwise permitted by state law or regulation.

**History.** Acts 1991, No. 752, § 2; 1993, No. 619, § 2; 1999, No. 1164, § 74.

## RESEARCH REFERENCES

**Ark. L. Rev.** Case Note, Johnson v. Sunray Services, Inc.: Possible Solutions to the NIMBY Syndrome, 45 Ark. L. Rev. 657.

### 8-6-713. Restriction on local government bonds and pledges.

(a) Unless approved by the regional solid waste management board, no municipality, county, improvement district, or sanitation authority within the regional solid waste management district shall:

(1) Issue any bonds for solid waste management purposes; or

(2) Pledge any revenues derived from solid waste management services for any bond issue.

(b) Notwithstanding the provisions of subsection (a) of this section, no board shall prohibit a municipality or county from issuing revenue bonds or using general obligation bonds when the purpose of such issuance or usage is the funding of a facility or project to process and market recycled materials for use as fuel.

(c) The board shall not impair any existing bond issue or other financial obligation of a municipality, county, improvement district, or sanitation authority.

**History.** Acts 1991, No. 752, § 2.

### **8-6-714. Rents, fees, and charges.**

(a)(1)(A) A regional solid waste management board may fix, charge, and collect rents, fees, and charges of no more than two dollars (\$2.00) per ton of solid waste related to the movement or disposal of solid waste within the district, including without limitation fees and charges:

(i) Related to the district's direct involvement with the district's disposal or treatment; or

(ii) That support the district's management of the solid waste needs of the district.

(B) The board may fix, charge, and collect fees or charges under subdivision (a)(1)(A)(ii) of this section only if the board:

(i) Employs or otherwise makes available from another agency an enforcement officer to:

(a) Enforce all local ordinances, statutes, and regulations for which the district has been previously given enforcement authority regarding solid waste including the Illegal Dump Eradication and Corrective Action Program Act, § 8-6-501 et seq.; and

(b) Seek to prevent and to identify and eliminate illegal dump sites;

(ii) Has a program for household hazardous waste collection and disposal; and

(iii) Has a program for recycling that includes rural areas of the district and the recycling of bulky waste.

(2) The board may fix, charge, and collect fees or charges for solid waste generated:

(A) Within or without the district delivered to a landfill or transfer station within the district, regardless of whether the disposal facilities are owned or operated by the district; or

(B) Within the district but delivered to a location outside the district.

(3) The board may fix, charge, and collect penalties from entities that fail to timely remit rents, fees, and charges under this section.

(4) Solid waste generated within one district and delivered to another district for disposal may be assessed a fee as follows:



(A) Either the district in which the solid waste was generated or a district in which the same solid waste is transported, stored, managed, or disposed may assess the fee;

(B) The fee may be assessed against the generator, transporter, or disposal facility; and

(C) Each ton or cubic yard of waste may be assessed only one (1) fee.

(b) The fees created in this section do not apply to:

(1)(A) Solid waste generated by private industry if the private industry bears the expense of operating and maintaining the disposal facility for the waste; or

(B) Non-municipal solid waste generated by private industry and shipped to another state for recycling, treatment, or disposal;

(2) Solid waste recycled, used, or generated by steel mills or related facilities classified within Subsector 331 of the 2007 North American Industrial Classification System, as it existed on January 1, 2011;

(3) Recyclable materials that are transported, processed, or marketed for recycling;

(4) Organic materials that are delivered to a permitted composting facility;

(5) Materials that are removed from solid waste and processed for recycling;

(6) Waste tires processed through a district's waste tire program; or

(7) Household hazardous waste collected through a district's household hazardous waste program.

(c)(1) The fee created in subsection (a) of this section shall not exceed two dollars (\$2.00) per ton of solid waste.

(2) However, if weight tickets are not available, the fee shall be calculated on a volume basis at twenty-five cents (25¢) per uncompacted cubic yard or forty-five cents (45¢) per compacted cubic yard.

(3)(A) Districts shall determine by interlocal agreement how the districts shall:

(i) Assess and administer the fee; and

(ii) Divide the fees.

(B) If districts cannot reach an interlocal agreement regarding the division of the fees, then the fees shall be divided equally between the districts.

(d) The board may levy a service fee on each residence or business for which the board makes solid waste collection or disposal services available.

(e)(1)(A) The board may, by majority vote, require fees or delinquent fees to be collected with the real and personal property taxes of any county within the district.

(B) If the board elects to collect such fees in this manner, it shall so notify the county tax collector, who shall enter such fees on tax notices to be collected with the real and personal property taxes of the county.

(C) No county tax collector shall accept payment of any property taxes where the taxpayer has been billed for solid waste collection services unless the service fee is also receipted.

(2) If a property owner fails to pay the service fee, it shall become a lien on the property.

**History.** Acts 1991, No. 752, § 2; 2011, No. 209, § 2.

**A.C.R.C. Notes.** Acts 2011, No. 209, § 1, provided: "The General Assembly finds that:

"(1) In 1989, the General Assembly recognized the need to create regional boards to address the disposal of solid waste and encourage programs to conserve landfill capacity in the State of Arkansas that was deemed inadequate and at or near the critical point;

"(2) In 1991, as an effort to aid in the establishment of regional boards and to provide economic viability, the General Assembly granted to regional solid waste management boards certain powers to collect fees and charges and to allow the boards to carry out the mandate of the enabling legislation;

"(3) There now appears to be an economic crisis affecting a number of the

regional solid waste management boards in the state because a legal challenge has been made regarding the authority of regional solid waste management boards to charge certain fees and charges;

"(4) Adequate solid waste management planning that affects the ability to charge fees and charges on solid waste generated within a district is in question because of the lack of clear direction within the existing statutes; and

"(5) The important steps the state has taken to encourage recycling and to address the state's solid waste management needs will be greatly hampered unless clear authority is given to regional solid waste management boards to charge fees and charges that will support the programs mandated by statute, but for which no other means of funding exists."

**Amendments.** The 2011 amendment rewrote this section.

### 8-6-715. Eminent domain.

(a) In the event that necessary lands needed for the accomplishment of the purposes authorized by this chapter cannot be acquired by negotiation, any district is authorized to acquire the needed lands by condemnation proceedings under the power of eminent domain.

(b)(1) The proceedings may be exercised in the manner now provided for taking private property for rights-of-way for railroads as set forth in §§ 18-15-1202 — 18-15-1207.

(2) As a part of the proceedings, the district shall file an environmental impact statement with the court.

(c) Nothing herein shall allow a district to appropriate by eminent domain any property upon which is located a permitted landfill, recycling facility, or incinerator or for which a permit for a landfill, recycling facility, or incinerator is pending.

**History.** Acts 1991, No. 752, § 2.

### 8-6-716. Regional needs assessment.

(a)(1)(A)(i) Each regional solid waste management board created pursuant to this subchapter shall prepare a regional needs assessment evaluating the solid waste management needs within its district. Provided, however, that such assessments need not include

an evaluation of the need for landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character.

(ii) Such assessment shall be submitted for Arkansas Department of Environmental Quality review, and the Director of the Arkansas Department of Environmental Quality shall approve or disapprove it within ninety (90) days after submission.

(B)(i) The assessments for boards created pursuant to § 8-6-703 shall be due every four (4) years.

(ii) The department may, at its discretion, stagger the due dates by random selection so that approximately one fourth ( $\frac{1}{4}$ ) of the districts will submit a needs assessment each year.

(C)(i) The department will notify in writing the regional solid waste management districts of the date on which their needs assessments are due.

(ii) The board may obtain an extension of that deadline from the director.

(D) A board created pursuant to § 8-6-703 in a region having a projected solid waste disposal capacity of less than five (5) years or in a region having no landfill for solid waste disposal shall prepare and submit a regional needs assessment annually, with the first needs assessment due on June 30, 1995, and with updated assessments due on June 30 of each year thereafter.

(E) Any board which submitted the biennial needs assessment due on January 31, 1995, under prior law, shall prepare and submit its next needs assessment on June 30, 1996, with updated assessments due on June 30 of each year thereafter.

(2) The assessment shall include, at the minimum, the following:

(A) An evaluation of the amount of solid waste generated within the district and the amount of remaining disposal capacity, expressed in years, at the solid waste disposal facilities within the district that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(B) An evaluation of the solid waste collection, transportation, and disposal needs of all localities within the district; and

(C) An evaluation and balancing of the environmental, economic, and other relevant factors which would be implicated by acceptance of solid waste from beyond the boundaries of the district.

(b) Each board shall update its regional needs assessment, at the minimum, every four (4) years.

(c) At a time not later than five (5) years before the disposal capacity in a region reaches its projected capacity, the board shall develop a request for proposals to increase the district's projected capacity for solid waste disposal within the district in accordance with its regional needs assessment.

(d) No landfill shall receive solid waste from beyond the district boundaries when projected solid waste disposal capacity within the



district is less than five (5) years, except as may be otherwise specified pursuant to this subchapter.

(e) No owner or operator of a landfill serving a limited area of a district shall be required to increase the landfill's service area to accommodate the needs of the district.

**History.** Acts 1991, No. 752, § 2; 1993, 1995, No. 1030, § 1, subdivision No. 619, § 3; 1995, No. 1030, § 1; 1999, (a)(1)(B)(ii) ended: "No needs assessments No. 428, § 2. shall be due until March 31, 1996."

**A.C.R.C. Notes.** As enacted by Acts

### **8-6-717. Solid waste management plan.**

(a) Each regional solid waste management board shall develop a plan to provide a solid waste management system. The plan shall be submitted to the Arkansas Department of Environmental Quality for approval. The plan shall include such information as the Arkansas Pollution Control and Ecology Commission may require by regulation.

(b) The solid waste management plan of each board shall include a regional plan for establishing a recycling program and an educational program to provide the public information concerning solid waste and recycling.

(c) The solid waste management plan of each board shall include a plan to dispose of or recycle waste tires within the district. The plan shall provide a schedule for the identification and cleanup of illegal tire dump sites.

**History.** Acts 1991, No. 752, § 2.

### **8-6-718. Waste tire collection center.**

Beginning July 1, 1993, each regional solid waste management board shall establish a waste tire collection center at which residents of the district may dispose of their waste motor vehicle tires at no cost except as provided by regulation of the Arkansas Pollution Control and Ecology Commission or the board.

**History.** Acts 1991, No. 752, § 2.

### **8-6-719. Regional composting program.**

(a) Each regional solid waste management board shall establish a program for the composting of yard waste.

(b) Each board shall establish a pilot program for the composting of yard waste collected in an area with a population of at least five thousand (5,000) persons. The pilot program shall be established in each district by July 1, 1992.

**History.** Acts 1991, No. 752, § 2.

**8-6-720. Opportunity to recycle — Recyclable materials collection centers.**

(a)(1) Beginning July 1, 1992, each regional solid waste management board shall ensure that its residents have an opportunity to recycle. "Opportunity to recycle" means availability of curbside pickup or collection centers for recyclable materials at sites that are convenient for persons to use.

(2) Beginning July 1, 1993, at least one (1) recyclable materials collection center shall be available in each county of a district unless the Arkansas Pollution Control and Ecology Commission grants the district an exemption. An exemption may be granted if a county is adequately served by a recyclable materials collection center in another county.

(3) Boards shall assess the operation of existing and proposed recycling centers and materials recovery facilities to determine the adequacy of these facilities for the collection and recovery of recyclable materials. Boards shall give due consideration to existing recycling facilities in ensuring the opportunity to recycle and are encouraged to use, to the extent practicable, persons engaged in the business of recycling on March 26, 1991, whether or not the persons were operating for profit.

(b) The Arkansas Department of Environmental Quality shall determine by regulation the adequacy of the facilities and the number and type of recyclable materials for which the services in this section must be provided.

(c) Each board shall provide information on how, when, and where materials may be recycled, including a promotional program that encourages source separation of residential, commercial, industrial, and institutional materials.

(d) Each board should ensure, alone or in conjunction with other boards, that materials separated for recycling are taken to markets for sale or to materials recovery facilities.

(e)(1) A board shall not prevent a person generating or collecting recyclable materials from delivering the recyclable materials to a recycling facility of the generator's or collector's choice.

(2) However, no person shall divert to personal use or commercial purpose any recyclable materials placed in a container as a part of a regional recycling program without the consent of the generator or the collector.

(3) Any person who pleads guilty or nolo contendere to or is found guilty of unlawfully diverting recyclable materials under a regional recycling program shall be guilty of a Class C misdemeanor.

(f) Each board shall incorporate into its solid waste management plan its proposal for fulfilling the obligations of this section.

(g) Nothing in this section shall be construed to prohibit the planning or implementation of any regional recycling program prior to compliance with the requirements of subsection (f) of this section.

**History.** Acts 1991, No. 752, § 2; 2001, No. 1720, § 4.

**Cross References.** Theft of recyclable materials, § 5-36-121.

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Criminal Law, 24 U. Ark. Little Rock L. Rev. 429.

#### 8-6-721. Licensing haulers of solid waste.

(a) A person who engages in the business of hauling solid waste must obtain a license from the regional solid waste management board if:

(1) The person is engaged in the collection of solid waste within the district; or

(2) The person is engaged in the transportation of solid waste for disposal or storage in the district.

(b)(1) A license shall be issued only to a person, partnership, corporation, association, the State of Arkansas, a political subdivision of the state, an improvement district, a sanitation authority, or another regional solid waste management district.

(2) The district may engage in the hauling of solid waste within its own district without licensure but shall comply with all applicable standards required under this section.

(c) The Arkansas Pollution Control and Ecology Commission shall establish classifications of haulers, which shall be used by districts in licensing haulers. The classifications shall be based on the nature and size of the loads transported.

(d)(1) The commission shall promulgate minimum standards for a license to haul solid waste.

(2) One (1) of the criteria for obtaining such a license shall be the financial responsibility of the hauler.

(e) The board may impose more stringent standards than the minimum standards established by the commission.

(f) The board may set a reasonable licensing fee for each class of haulers.

**History.** Acts 1991, No. 752, § 2.

#### 8-6-722. Penalties.

Any person who violates this subchapter or any regulation of the Arkansas Pollution Control and Ecology Commission or of a regional solid waste management board shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be subject to imprisonment for not more than thirty (30) days or a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

**History.** Acts 1991, No. 752, § 2.



**8-6-723. Alternative formation of original districts.**

(a)(1) In lieu of forming a regional solid waste management district under any other provision of this subchapter, a regional solid waste management district may be created by interlocal agreement of the local governments in any county with a population of at least ninety thousand (90,000) persons and in which there is a permitted landfill on January 1, 1991. The regional solid waste management board of the district shall be established by interlocal agreement.

(2) The creation of the district shall be effective upon the Director of the Arkansas Department of Environmental Quality's receipt of written notice in the form of a joint resolution by the local governments.

(b)(1) In lieu of forming a regional solid waste management district under any other provision of this subchapter, a district may be created by a resolution of the governing body of any authority created under the Joint County and Municipal Solid Waste Disposal Act, § 14-233-101 et seq., which includes a county having a population of at least sixty thousand (60,000) persons and which has made application to the Arkansas Department of Environmental Quality for a solid waste disposal permit on or before January 1, 1991.

(2) The creation of a district shall be effective upon the governing body of the authority notifying the director in writing. The governing body of a district created under this subsection shall be determined by the authority creating the district. The provisions of § 8-6-703 or any other section of this subchapter which provides for the method of selection of the governing body of a district shall not apply to districts formed under this subsection.

(c) The Arkansas Pollution Control and Ecology Commission shall have no authority to add to or otherwise change the boundaries of a district created under this section.

**History.** Acts 1991, No. 752, § 2.

**8-6-724. Regional standards.**

Regional solid waste management boards may adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than the state or federal governments, provided such standards are based upon generally accepted scientific knowledge or engineering practices and are consistent with the purposes of this subchapter.

**History.** Acts 1995, No. 902, § 1.

**CASE NOTES****Regulations.**

The proper standard under this section for reviewing regulations is whether they are based upon generally accepted scientific knowledge or engineering practices,

rather than whether they are generally accepted in state or federal law. *Four County Regional Solid Waste Mgt. Dist. Bd. v. Sunray Servs., Inc.*, 334 Ark. 118, 971 S.W.2d 255 (1998).

## SUBCHAPTER 8 — BONDS BY REGIONAL SOLID WASTE MANAGEMENT DISTRICTS

## SECTION.

- 8-6-801. Definitions.
- 8-6-802. Construction.
- 8-6-803. Pledge of rents, fees, and charges.
- 8-6-804. Bonds — Issuance, execution, and sale.
- 8-6-805. Bonds — Trust indenture.
- 8-6-806. Bonds — Default.
- 8-6-807. Bonds — Liability — Payment and security.
- 8-6-808. Refunding bonds — Issuance.

## SECTION.

- 8-6-809. Pledge of rates, fees, and charges.
- 8-6-810. Rights of bondholders.
- 8-6-811. Bonds — Tax exemption.
- 8-6-812. Tax exempt status of property and income of district.
- 8-6-813. Investment of public funds in bonds.
- 8-6-814. Transfer of facilities to district by county or municipality.

**A.C.R.C. Notes.** Acts 1991, No. 752, § 5, provided: "Any solid waste management system operating under the authority of § 14-233-101 et seq. with five (5) or more counties currently being served by these authorities upon the passage of this act shall, upon notification to the regional board and the Commission, shall be designated a regional solid waste management district. The governing body of the district shall be as determined by the authority by resolution."

**Effective Dates.** Acts 1991, No. 752, § 9: Mar. 26, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in siting landfill facilities and the difficulties of financing public waste recovery and disposal facilities at the local level. It is found that regional solid waste authorities are needed to expedite the financing, siting, and operation of new waste management facilities in order that

the health and welfare of the citizens of Arkansas be insured and that the state's environment be protected. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 439, § 5: Feb. 24, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the mandatory requirement that the Arkansas Development Finance Authority advise Solid Waste Management Districts and make a determination that the financing and project are financially feasible and advisable in connection with the issuance of Solid Waste Management Bonds is unnecessary and constitutes an undue burden upon the issuance of such bonds. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

#### 8-6-801. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Authority" means the Arkansas Development Finance Authority;

(2) "Board" means a regional solid waste management board created under § 8-6-701 et seq.;

(3) "Bonds" means bonds and any series of bonds authorized by and issued pursuant to the provisions of this subchapter and comprehends "revenue bonds", as defined in Arkansas Constitution, Amendment 65, Section 3;

(4) "Costs" or "project costs" means, but shall not be limited to:

(A) All costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto;

(B) All costs of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing them;

(C) Administrative, organizational, legal, engineering, and inspection expenses;

(D) Financing fees, expenses, and costs, including, but not limited to, costs of credit enhancement or guaranties, trustees' fees, paying agents' fees or similar fees, and fees to financial advisors and other entities assisting in the issuance of bonds;

(E) Working capital;

(F) All machinery and equipment, including construction equipment;

(G) Interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing or borrowing district;

(H) Establishment of reserves; and

(I) All other expenditures of the issuing or borrowing district incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any project and the placing of it in operation;

(5) "District" means a regional solid waste management district created under § 8-6-701 et seq.;

(6)(A) "Project" means any real property, personal property, or mixed property of any and every kind that can be used or will be useful in controlling, collecting, storing, removing, handling, reducing, disposing of, treating, and otherwise dealing in and concerning solid waste, including, without limitation, property that can be used or that will be useful in extracting, converting to steam, including the acquisition, handling, storage, and utilization of coal, lignite, or other fuel of any kind, or water that can be used or that will be useful in converting solid waste to steam, and distributing the steam to users thereof, or otherwise separating and preparing solid waste for reuse, or that can be used or will be useful in generating electric energy by the use of solid waste as a source of generating power and distributing the electric energy to purchasers or users thereof in accordance with the general laws of the state.



(B) However, for the purposes of this subchapter, not more than twenty-five percent (25%) of the fuel used to produce steam or electricity from any project shall consist of materials other than solid waste; and

(7) "Solid waste" shall have the same meaning as provided in § 8-6-702.

**History.** Acts 1991, No. 752, § 4.

### **8-6-802. Construction.**

(a) The powers provided by this subchapter shall be supplemental to all other powers conferred on regional solid waste management boards.

(b) Except as expressly provided in this subchapter, the acquisition, construction, reconstruction, enlargement, equipment, or operation and maintenance of projects under the provisions of this subchapter need not comply with the requirements of any other law applicable to the acquisition, construction, reconstruction, enlargement, equipment, and operation and maintenance of public works or facilities, including, without limitation, laws pertaining to public bidding, paying prevailing wages, transfer or exchange of title to real or personal property, or any other aspect of the acquiring, constructing, reconstructing, enlarging, equipping, or operation or maintenance of public works or public projects, or transfer or exchange of title to real or personal property, none of which laws shall be applicable to projects under this subchapter.

(c) This subchapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof.

**History.** Acts 1991, No. 752, § 4.

### **8-6-803. Pledge of rents, fees, and charges.**

A regional solid waste management board may pledge any rents, fees, and charges imposed by the board to secure the repayment of bonds issued to finance projects, as provided for in this subchapter.

**History.** Acts 1991, No. 752, § 4.

### **8-6-804. Bonds — Issuance, execution, and sale.**

(a) Regional solid waste management boards are authorized to use any available funds and revenues for the accomplishment of projects and may issue bonds, as authorized by this subchapter, for the purpose of paying project costs and accomplishing projects, either alone or together with other available funds and revenues.

(b)(1) The issuance of bonds shall be by resolution of the board.

(2) The bonds may be coupon bonds payable to bearer, subject to registration as to principal or as to principal and interest, or fully registered bonds without coupons, may contain exchange privileges, may be issued in one (1) or more series, may bear such date or dates,

may mature at such time or times, not exceeding forty (40) years from their respective dates, may bear interest at such rate or rates, may be in such form, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption in advance of maturity at such prices, and may contain such terms, covenants, and conditions as the resolution may provide, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the maintenance of various funds and reserves, the investing and reinvesting of any moneys during periods not needed for authorized purposes, the nature and extent of the security, the rights, duties, and obligations of the regional solid waste management district and the trustee for the holders or registered owners of the bonds, and the rights of the holders or registered owners of the bonds.

(c) There may be successive bond issues for the purpose of financing the same project, and there may be successive bond issues for financing the cost of reconstructing, replacing, constructing additions to, extending, improving, and equipping projects already in existence, whether or not originally financed by bonds issued under this subchapter, with each successive issue to be authorized as provided by this subchapter. Priority between and among issues and successive issues as to security of the pledge of revenues and lien on the project involved may be controlled by the resolution authorizing the issuance of the bonds.

(d) Subject to the provisions of this subchapter pertaining to registration, the bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas.

(e) The bonds may be sold at public or private sale for such price, including, without limitation, sale at a discount, and in such manner as the board may determine by resolution.

(f) Bonds issued under this subchapter shall be executed by the manual or facsimile signatures of the chair and secretary of the board, but one (1) of such signatures must be manual. The coupons attached to the bonds may be executed by the facsimile signature of the chair of the board. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The seal of the board shall be placed or printed on each bond in such manner as the board shall determine.

(g)(1)(A) Prior to the issuance of any bonds pursuant to this subchapter, the district may seek the advice of the Arkansas Development Finance Authority as to the financial feasibility of the project to be financed, and, if so, shall provide the authority with such information and documentation as it may reasonably request in order to render that advice.

(B) In the event the district seeks the advice of the authority, the authority shall be entitled to reasonable compensation for its services as determined by the district and the authority.

(2) The district may request the authority to designate it as a developer, as contemplated by § 15-5-403, and hence, to guarantee the

bonds on such terms and conditions as may be mutually agreed upon by the district and the authority, consistent with the program delineated in § 15-5-401 et seq.

(3) The district may also request that the authority be the issuer of the bonds and loan the proceeds thereof to the district, secured by a pledge of revenues from the project on such terms as may be necessary to permit the sale of the bonds, consistent with the provisions hereof applicable to the issuance of bonds directly by districts.

(h) Regional solid waste management boards are specifically authorized to apply for and receive loans from the Arkansas Natural Resources Commission to finance projects from the proceeds of the Arkansas Pollution Control and Ecology Commission's bonds issued pursuant to § 15-22-701 et seq., on terms mutually acceptable to the borrowing board and the commission, including, but not limited to, provisions for a pledge of revenues to secure such loans, as set forth in § 8-6-803. The commission is authorized but not required to require, as a prerequisite to approving any such loan, that the borrowing board comply with some or all of the requirements of subsections (a) and (f) and subdivisions (b)(1) and (g)(1) of this section. The commission is further authorized to enter into agreements with the authority for such services to the commission or to the borrowing boards as the commission deems necessary or desirable in furtherance of the commission's powers and duties under § 15-22-701 et seq., the authority granted hereby being in addition to those powers and not in derogation or restriction thereof.

**History.** Acts 1991, No. 752, § 4; 1995, No. 439, § 1.

### **8-6-805. Bonds — Trust indenture.**

(a) The resolution authorizing the bonds may provide for the execution by the regional solid waste management district with a bank or trust company within or without this state of a trust indenture which defines the rights of the holders and registered owners of the bonds.

(b) The indenture may control the priority between and among successive issues and may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to the custody and application of proceeds of the bonds, the maintaining of rates and charges, the collection and disposition of revenues, the maintenance of various funds and reserves, the nature and extent of the security and pledging of revenues, the rights, duties, and obligations of the district and the trustee for the holders or registered owners of the bonds, and the rights of the holders and registered owners of the bonds.

(c) The resolution or trust indenture authorizing or securing any bonds issued under this subchapter may or may not impose a foreclosable mortgage lien upon or security interest in the project financed in whole or in part with the proceeds of the bonds, and the nature and



extent of the mortgage lien or security interest may be controlled by the resolution or trust indenture, including, without limitation, provisions pertaining to the release of all or part of the project properties from the mortgage lien or security interest and the priority of the mortgage lien or security interest in the event of the issuance of additional bonds.

(d) Subject to the terms, conditions, and restrictions which may be contained in the resolution or trust indenture, any holder or registered owner of bonds issued under this subchapter or of any coupon attached thereto may, either at law or in equity, enforce the mortgage lien or security interest and may, by proper suit, compel the performance of the duties of the members and employees of the regional solid waste management board as set forth in the resolution or trust indenture authorizing or securing the bonds.

**History.** Acts 1991, No. 752, § 4.

### **8-6-806. Bonds — Default.**

(a)(1) In the event of a default in the payment of the principal of, premium on, if any, or interest on any bonds issued under this subchapter, any court having jurisdiction may appoint a receiver to take charge of all or any part of the project in which there is a mortgage lien or security interest securing the bonds in default.

(2) The receiver shall have the power and authority to operate and maintain the project, to charge and collect rates, payments, rents, and charges sufficient to provide for the payment of the principal of, premium on, if any, and interest on the bonds, after providing for the payment of any costs of receivership and operating expenses of the project, and to apply the revenues derived from the project in conformity with this subchapter and the resolution or trust indenture authorizing or securing the bonds.

(3) When the default has been cured, the receivership shall be ended and the project returned to the regional solid waste management district.

(b) The relief afforded by this section shall be construed to be in addition and supplemental to the remedies that may be afforded the trustee for the bondholders and the bondholders in the resolution or trust indenture authorizing or securing the bonds and shall be so granted and administered as to accord full recognition to priority rights of bondholders as to the pledge of revenues from and the mortgage lien on and security interest in the project as specified in and fixed by the resolutions or trust indentures authorizing or securing successive bond issues.

**History.** Acts 1991, No. 752, § 4.

**8-6-807. Bonds — Liability — Payment and security.**

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter and that the bonds are obligations only of the regional solid waste management district.

(b) No member of the regional solid waste management board shall be personally liable on the bonds or for any damages sustained by anyone in connection with any contracts entered into in carrying out the purpose and intent of this subchapter unless he or she shall have acted with corrupt intent.

(c) The principal of and interest on the bonds shall be payable from and may be secured by a pledge of revenues derived from the project acquired, constructed, reconstructed, equipped, extended, or improved, in whole or in part, with the proceeds of the bonds or obligations of the owners of projects.

**History.** Acts 1991, No. 752, § 4.

**8-6-808. Refunding bonds — Issuance.**

(a) Bonds may be issued for the purpose of refunding any bonds issued under this subchapter. Refunding bonds may be combined with bonds issued under the provisions of § 14-233-109 into a single issue.

(b) When refunding bonds are issued, they may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited in escrow for the retirement thereof.

(c) All refunding bonds shall in all respects be issued and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of those bonds.

(d) The resolution under which refunding bonds are issued may provide that any of the refunding bonds shall have the same priority of lien on and security interest in project revenues and the project as was enjoyed by the bonds refunded by them.

**History.** Acts 1991, No. 752, § 4.

**8-6-809. Pledge of rates, fees, and charges.**

(a) If the regional solid waste management board pledges rates, fees, and charges, then for as long as any bonds are outstanding and unpaid, the rates, fees, and charges shall be so fixed by the regional solid waste management district as to provide revenues sufficient:

(1) To pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements, or renewals thereof;

(2) To pay when due the principal of, premium, if any, and interest on all bonds, including bonds subsequently issued for additional projects, payable from the revenues;

(3) To create and maintain reserves as may be required by any resolution or trust indenture authorizing or securing bonds; and

(4) To pay any and all amounts which the district may be obligated to pay from project revenues by law or contract.

(b)(1) Any pledge made by a district pursuant to this subchapter shall be valid and binding from the date the pledge is made.

(2)(A) The revenues so pledged and then held or thereafter received by the district or any fiduciary on its behalf shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act.

(B) The lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the district without regard to whether such parties have notice thereof.

(c) The resolution, trust indenture, or other instrument by which a pledge is created need not be filed or recorded in any manner.

**History.** Acts 1991, No. 752, § 4.

#### **8-6-810. Rights of bondholders.**

Any holder or registered owner of bonds or coupons pertaining to the bonds, except to the extent the rights given in this subchapter may be restricted by the resolution or trust indenture authorizing or securing the bonds and coupons, may, either at law or in equity, by suit, action, mandamus, or other proceeding protect and enforce any and all rights under the laws of the state or granted under this subchapter or, to the extent permitted by law, under the resolution or trust indenture authorizing or securing the bonds or under any agreement or other contract executed by a district pursuant to this subchapter, and may enforce and compel the performance of all duties required by this subchapter or by the resolution or trust indenture to be performed by any regional solid waste management district, or by any officer of the foregoing, including the fixing, charging, and collecting of rates, fees, and charges.

**History.** Acts 1991, No. 752, § 4.

#### **8-6-811. Bonds — Tax exemption.**

Bonds issued under the provisions of this subchapter and the interest thereon shall be exempt from all state, county, and municipal taxes, including property, income, inheritance, and estate taxes. Provided, however, that nothing herein shall preclude a district from requesting the Arkansas Development Finance Authority to issue taxable bonds in furtherance of the purposes hereof, on such terms as the regional solid waste management district and the authority deem advisable and in conformity with the authority's statutory authority for issuance of such bonds.



**History.** Acts 1991, No. 752, § 4.

### **8-6-812. Tax exempt status of property and income of district.**

All properties at any time owned by the regional solid waste management district and the income therefrom shall be exempt from all taxation in the State of Arkansas.

**History.** Acts 1991, No. 752, § 4.

### **8-6-813. Investment of public funds in bonds.**

(a) Any municipality or any board, commission, or other authority established by ordinance of any municipality or the boards of trustees, respectively, of the firemen's relief and pension fund and the policemen's pension and relief fund of any municipality or the board of trustees of any retirement system created by the General Assembly of the State of Arkansas may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the provisions of this subchapter.

(b) Bonds issued under the provisions of this subchapter shall be eligible to secure the deposit of public funds.

**History.** Acts 1991, No. 752, § 4.

### **8-6-814. Transfer of facilities to district by county or municipality.**

Any municipality or county may acquire facilities for a project, or any portion thereof, including a project site, by gift, purchase, lease, or condemnation, and may transfer the facilities to the regional solid waste management district by sale, lease, or gift. The transfer may be authorized by ordinance of the governing body without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

**History.** Acts 1991, No. 752, § 4.

## **SUBCHAPTER 9 — LICENSING OF OPERATORS OF SOLID WASTE MANAGEMENT FACILITIES**

#### **SECTION.**

8-6-901. Definitions.

8-6-902. Penalties — Procedures.

8-6-903. Licenses required.

8-6-904. Licensing committee — Members — Compensation — Restrictions.

#### **SECTION.**

8-6-905. Powers and duties.

8-6-906. Classification of licenses.

8-6-907. Licensing.

8-6-908. Licensing — Eligibility — Reciprocity.

8-6-909. Fees.

**A.C.R.C. Notes.** Acts 1997, No. 1207, § 5, codified as § 8-6-509, provided: "Arkansas Code § 8-6-201 et seq., § 8-6-501 et seq. and § 8-6-901 et seq. shall not apply to:

"(1) Any place at which agricultural gleanings and crop residue, resulting from operations of farms, grain elevators, cotton gins and similar industries, are being land applied according to current management practices of such industries or the agricultural community and with the consent of the landowner is not an illegal dump; and

"(2) Any landowner who disposes of solid waste on the property which waste results from such agricultural or farming operations or household operations and such disposal does not constitute a fire, health or safety hazard to the public."

**Effective Dates.** Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19. Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

### CASE NOTES

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep't of Pollution Con-

trol & Ecology, 137 B.R. 735 (E.D. Ark. 1992).

**8-6-901. Definitions.**

As used in this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality or the director's delegate or representative;

(4) "Illegal dumps control officer" means an individual employed by an authorized solid waste management district within this state, a county government within this state, or a pollution control inspector or other representative of the department who is empowered to ensure compliance with any state law prohibiting the illegal dumping of solid wastes;

(5) "License" means a certificate of competency issued by the director to solid waste management facility operators and illegal dumps control officers who have met the requirements of the licensing program;

(6) "Licensing committee" means the committee of solid waste management facility managers, operators, or technicians hereinafter established to assist and advise the commission and the department in the examining and licensing of operators of solid waste management facilities;

(7)(A) "Operator" means any person who performs operation of a solid waste management facility requiring individual judgment which may directly affect the proper operation of the solid waste management facility.

(B) "Operator" shall not include an official solely exercising general administrative supervision;

(8) "Operator-in-training" means an employee of a solid waste management facility who has been issued an apprenticeship license by the director;

(9) "Provisional certificate" means a document issued to an operator by the director allowing an individual to operate at a facility while working to fulfill the licensing requirements;

(10)(A) "Recovered materials" means:

(i) Metal;

(ii) Paper;

(iii) Glass;

(iv) Plastic;

(v) Textiles;

(vi) Yard trimmings not destined for composting; or

(vii) Rubber materials which are not waste tires or waste tire residuals, that have known recycling potential, can be feasibly recycled, and have been diverted and source-separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other but do not include materials destined for any use that constitutes disposal.



(B) “Recovered materials” are not solid waste;

(11) “Sanitary landfill” means any place for which a permit for disposal of solid waste on land is required under the provisions of this chapter;

(12)(A) “Solid waste disposal facility” means any place at which solid waste is dumped, abandoned, accepted, or disposed of for final disposition by incineration, landfilling, composting, or other method.

(B) Wastewater treatment plants permitted under the National Pollutant Discharge Elimination System and units at hazardous waste management facilities permitted under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and this Code shall not be deemed to be disposal sites or facilities for the purpose of this subchapter; and

(13)(A) “Solid waste management facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for storage, collection, transportation, processing, treatment, or disposal of solid waste.

(B)(i) For purposes of this subchapter, facilities engaged solely in the recycling of source-separated materials are excluded.

(ii) Also excluded are processes, operations, and facilities that are regulated pursuant to hazardous waste rules and regulations which are not regulated pursuant to solid waste rules and regulations.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1207, § 3; 1997, No. 1254, § 1; 1999, No. 1164, § 75; 2005, No. 728, § 1; 2009, No. 1199, § 9.

**Amendments.** The 2009 amendment substituted “or” for “and/or” in (13)(A), and substituted “and” for “and/or” in (13)(B)(ii).

## 8-6-902. Penalties — Procedures.

(a) Any person who violates any provision of this subchapter or of any rule, regulation, or order issued pursuant thereto, shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) Except as otherwise provided in this subchapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-230 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including, without limitation, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

(c) All rules and regulations adopted under this subchapter shall be reviewed by the interim House Committee on Public Health, Welfare, and Labor and the interim Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 179, § 5.

**8-6-903. Licenses required.**

(a) It shall be illegal for any county, municipality, governmental subdivision, public or private corporation, or other person to operate a solid waste management facility unless the competency of the operator is duly licensed by the Director of the Arkansas Department of Environmental Quality under the provisions of this subchapter.

(b) It shall further be illegal for any person to perform the duties of an operator of any such solid waste management facility without being duly licensed under this subchapter.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1.

**8-6-904. Licensing committee — Members — Compensation — Restrictions.**

(a)(1) There is created a licensing committee to advise and assist the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Environmental Quality in the administration of the licensing program.

(2) The licensing committee shall be composed of ten (10) voting members as follows:

(A) Three (3) members, to be appointed by the commission, shall be solid waste management facility operators licensed by the department;

(B) One (1) member, to be appointed by the commission, shall be an employee of a county operating a solid waste management facility who holds the position of solid waste management facility on-site operator or supervisor;

(C) One (1) member, to be appointed by the commission, shall be an employee of a municipality operating a sanitary landfill who holds the position of landfill on-site operator or supervisor;

(D) One (1) member, to be appointed by the commission, shall be a representative of one (1) of the duly constituted regional solid waste management boards;

(E) One (1) member, to be appointed by the commission, shall be an on-site operator or supervisor of a waste tire processing facility;

(F) One (1) member, to be appointed by the commission, shall be an on-site operator or supervisor of a nonsegregated materials recovery, transfer, or composting facility;

(G) One (1) member, to be appointed by the commission shall be a faculty member of or other qualified person associated with an accredited college, university, or professional school in this state whose major field is related to environmental education; and

(H) One (1) member, to be appointed by the Director of the Arkansas Department of Environmental Quality, shall be a qualified member of his or her staff who shall serve ex officio with no vote as executive secretary of the licensing committee.

(b)(1) In the event of a vacancy, a new member shall be appointed by the commission to serve out the unexpired term.

(2)(A) As of August 12, 2006, no nonstate agency member shall serve more than two (2) consecutive three-year terms.

(B) Those members serving unexpired five-year terms may serve an additional one (1) consecutive three-year term.

(c) The committee shall select a member to serve as chair each year and shall meet as necessary to carry out its duties under this subchapter and at the call of the chair.

(d) State agency members of the licensing committee shall receive no additional salary or per diem for their services as members of the committee, but they shall be allowed their travel and maintenance expenses while attending meetings away from Little Rock.

(e) No member of the committee shall participate in any licensing decision involving the firm or organization by which that member is employed or in which that member has a direct or indirect financial interest.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 250, § 47; 1997, No. 1254, § 2; 1999, No. 1508, § 7(c); 2005, No. 728, § 2.

**A.C.R.C. Notes.** Acts 1991, No. 750, § 1, provided, in part: "The operators ini-

tially appointed to the licensing committee shall hold valid certificates under the existing voluntary certification program."

The operation of subdivision (d)(2) may be affected by the enactment of Acts 1995, No. 1211, codified as § 25-16-901 et seq.

## 8-6-905. Powers and duties.

(a) The Arkansas Pollution Control and Ecology Commission, with the advice and assistance of the licensing committee, is given and charged with the power and duty to adopt rules and regulations implementing and effectuating such powers and duties of the Arkansas Department of Environmental Quality and the licensing committee under this subchapter as may be necessary for the administration and enforcement of this subchapter.

(b) The department is charged with the responsibility of administering and enforcing this subchapter, with the advice and assistance of the licensing committee and is given and charged with the following powers and duties:

(1)(A) To conduct examinations for licensing, which shall be held at least annually and more frequently as the commission shall deem necessary.

(B) This duty may be delegated by the department to the administrator of any approved course;

(2) To issue licenses to qualified solid waste management facility operators and qualified illegal dumps control officers, to renew those licenses, to suspend or revoke the licenses for cause after due notice and opportunity for hearing, to issue one-year apprenticeship licenses to operators-in-training, and to issue provisional certificates; and



(3) To initiate enforcement actions or institute court proceedings, or both, to compel compliance with the provisions of this subchapter and rules and regulations issued under this subchapter.

(c) The licensing committee shall:

(1) Conduct inquiries and establish findings necessary to advise the commission and the department on irregularities encountered in the management of the licensing program;

(2) Conduct inquiries and establish facts necessary to advise the commission and the department on the actions of licensees; and

(3) Recommend administrative sanctions, including, but not limited to, the suspension and revocation of licenses as necessary to promote the professional integrity of solid waste licensees.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1207, § 4; 1997, No. 1254, § 3; 2005, No. 728, § 3.

**A.C.R.C. Notes.** Acts 1997, No. 1207, § 6, codified as § 8-6-510, provided:

"None of the provisions of this act are intended to supersede any of the reuse, recycling or fill provisions of state law or Regulation 22 of the Solid Waste Management Division of the Department of Pollution Control and Ecology."

### **8-6-906. Classification of licenses.**

(a) The Arkansas Pollution Control and Ecology Commission shall classify solid waste management facility operator licenses, taking into account the type and complexity of the solid waste management facility, the character and volume of waste managed, the skill, knowledge, and experience reasonably required to successfully operate the solid waste management facility, and such other factors as the commission shall deem appropriate.

(b) The Director of the Arkansas Department of Environmental Quality, with the advice and assistance of the licensing committee, shall license persons according to their qualifications to successfully operate solid waste management facilities within the classifications established and effectuated by rules and regulations promulgated by the commission.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1.

### **8-6-907. Licensing.**

All operators in responsible charge of public and private solid waste management facilities shall be duly licensed and certified as competent by the Director of the Arkansas Department of Environmental Quality under the provisions of this subchapter and under such rules and regulations as the Arkansas Pollution Control and Ecology Commission may adopt, with the advice and assistance of the licensing committee, pursuant to the authority of this subchapter.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1.

**8-6-908. Licensing — Eligibility — Reciprocity.**

(a)(1) The Director of the Arkansas Department of Environmental Quality shall license and certify all applicants for licenses under this subchapter who satisfy the requirements of this subchapter and the rules and regulations issued pursuant thereto.

(2) Licenses shall be granted according to the classifications of operator licenses established in the rules and regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

(3) Licenses shall be valid for a period of one (1) year and, with the exception of the apprenticeship license, shall be renewable upon application if the applicant meets the renewal requirements established by commission regulation. Provisional certificates shall be for a period of one (1) year, but may be extended if the director determines there is sufficient justification.

(b) All operators of solid waste management facilities within the state shall apply to the department for a license.

(c) The director may, at his or her discretion, waive the requirements or any part of the requirements for formal examination of an applicant for a license if the applicant holds a valid license or certificate from another state in which the requirements for a license in the appropriate classification are at least equal to the requirements set forth in this subchapter and the rules and regulations issued pursuant thereto.

(d) The director shall issue an apprenticeship license to operators-in-training as established under this subchapter and in rules and regulations promulgated by the commission.

(e) The director may issue, at his or her discretion, a provisional certificate to any operator for just cause as established under this subchapter and in rules and regulations promulgated by the commission.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1254, § 4.

**Publisher's Notes.** Acts 1991, No. 750, § 1, provided, in part: "Those applicants who do not hold voluntary certificates of

competency may, without examination, be granted limited operator's licenses valid only for the facility where then employed for a period of one (1) year after the effective date of this subchapter."

**8-6-909. Fees.**

(a) The Arkansas Pollution Control and Ecology Commission shall have the authority to set fees in an amount to cover the cost of the administration of this subchapter. These fees to be assessed per classification of certification shall not exceed fifty dollars (\$50.00) for the initial cost of examination and license, fifty dollars (\$50.00) for the cost of reciprocity review and license, twenty-five dollars (\$25.00) for annual license renewal, twenty-five dollars (\$25.00) for provisional certificates, and a ten-dollar penalty for late renewal.

(b) All of the fees shall be deposited in the Arkansas Department of Environmental Quality Fee Fund, as established in § 8-1-105.

**History.** Acts 1991, No. 750, § 1; 1995, No. 165, § 1; 1995, No. 193, § 1; 1997, No. 1254, § 5; 1999, No. 1164, § 76.

## SUBCHAPTER 10 — LANDFILL POST-CLOSURE TRUST FUND

### SECTION.

8-6-1001. Definitions.

8-6-1002. Creation.

8-6-1003. Landfill disposal fees.

### SECTION.

8-6-1004. Collection of fees.

8-6-1005. Penalties.

**Publisher's Notes.** Acts 1993, No. 1127, § 1 provided: "The Arkansas General Assembly makes the following findings:

"(1) Arkansas Act 747 of 1991 (codified at Ark. Code Ann. § 8-6-1001 et seq. (Supp. 1991)) created the "Landfill Post-Closure Trust Fund" and imposed additional landfill disposal fees for that purpose.

"(2) Arkansas Act 754 of 1991 (codified at Ark. Code Ann. § 8-6-606 (Supp. 1991)) amended Ark. Code Ann. § 8-6-606 to increase the landfill disposal fees under the Solid Waste Management Recycling Fund Act. The landfill disposal fees under the Solid Waste Management Recycling Fund had previously been established by Arkansas Act 849 of 1989 and Arkansas Act 934 of 1989.

"(3) The General Assembly has learned that in many areas of the state, residents and businesses are having their solid waste transported to and disposed of at landfill disposal sites in other states. By doing so, these residents and businesses are avoiding paying their share of taxes referenced above, as would ordinarily be passed on to the solid waste generator. By such transportation and disposal of solid waste in other states, this state is losing much needed revenues. Further, by requiring the payment of such fees on solid wastes disposed of within the state, but not on solid wastes generated within this state and transported to and disposed of in other states, the existing fee structure under the above-referenced law unfairly burdens landfill disposal entities within the state since they are required to pay said fees causing them to charge higher rates than their out of state competitors which do not have to pay such fees.

"(4) In order to remedy the present situation, it is the finding of the Arkansas

General Assembly that similar fees need to be assessed on all solid waste transported in Arkansas but disposed of outside the state. By doing so, the avoidance of landfill disposal fees by the transfer of solid waste out of state will be remedied and the current unfair burden on in-state landfill disposal entities will be alleviated."

**Effective Dates.** Acts 1993, No. 1127, § 7: Apr. 13, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that some areas of the state are facing critical shortages of solid waste disposal capacity due to the difficulties in siting landfill facilities at the local level. It is found that the authority granted to municipalities and counties to adopt more restrictive standards for the location, design, construction, and maintenance of solid waste disposal sites and facilities than those adopted by the federal, state and regional laws, rules, regulations, and orders, has exacerbated and attenuated this crises and could thwart or jeopardize the purposes of Arkansas Act 752 of 1991 and its efforts to protect the public health and the state's environmental quality by establishing regional solid waste management and planning. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 938, § 9: July 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the fiscal year begins on July 1, and that this emergency clause is necessary in order that uniformity can be achieved at the beginning of the 1997-1998 fiscal year for



money deposited into the Landfill Post-Closure Trust Fund and the moneys allocated from that fund for the Illegal Dump Eradication and Corrective Action Program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1210, § 10: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two

(2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

### CASE NOTES

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep't of Pollution Control & Ecology, 137 B.R. 735 (E.D. Ark. 1992).

### 8-6-1001. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "Landfill" means all landfills permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq., except those landfills where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or wastes of a similar kind or character;

(5) "Permittee" means any person holding a solid waste disposal permit as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq.;

(6) "Post-closure corrective action" means any measures deemed necessary by the director to prevent or abate contamination of the environment from any landfill which has been certified as properly closed by the department;

(7) "Solid waste" means any garbage or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air

pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342 or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, 68 Stat. 923;

(8) "Solid waste disposal permit" means a permit issued by the State of Arkansas under the provisions of the Arkansas Solid Waste Management Act, § 8-6-201 et seq. for the construction and operation of a landfill waste disposal facility; and

(9) "Transporter" or "solid waste transporter" means any individual, corporation, company, firm, partnership, association, trust, local solid waste authority, institution, county, city, town, or municipal authority or trust, venture, or other legal entity transporting solid waste within the state that is to be disposed of outside of the state.

**History.** Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 3; 1999, No. 1164, § 77.

**U.S. Code.** The Atomic Energy Act of 1954, referred to in this section, is codified as 42 U.S.C. § 2011 et seq.

### 8-6-1002. Creation.

(a)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Landfill Post-Closure Trust Fund".

(2) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited in the fund all landfill disposal fees collected pursuant to this subchapter and any moneys received by the state as a gift or donation to the fund or any federal moneys designated to enter the fund and all interest earned upon moneys deposited in the fund.

(3)(A) Moneys received into the fund may also be used by the Arkansas Department of Environmental Quality for administrative purposes at a level not to exceed three hundred thousand dollars (\$300,000) annually with an annual escalator not to exceed three percent (3%).

(B) In the event the total amount in the fund equals or exceeds twenty-five million dollars (\$25,000,000), no additional moneys shall be collected pursuant to this subchapter until the total amount in the fund equals or is less than fifteen million dollars (\$15,000,000) at which time the collection of moneys shall resume.

(b)(1) The Landfill Post-Closure Trust Fund shall be administered by the department, which shall authorize funding and administrative expenditures from the fund according to the provisions of this subchapter.

(2)(A) The fund shall be administered by the department and shall be used by the department for landfill post-closure corrective action.

(B) The fund shall be used only if the director determines that:

(i) A landfill which is no longer receiving waste, regardless of when it ceased operating, is causing groundwater contamination or is causing other contamination that is a hazard to public health or endangers the environment; and

(ii) The owner or operator of the landfill site has expended at least ten thousand dollars (\$10,000) toward corrective action, unless the owner or operator cannot be located or the director determines an emergency exists necessitating immediate corrective action.

(c) The fund shall not be used to compensate third parties for damages to property caused by the contamination.

(d) For the purposes of this subchapter only, closed areas or operational phases contiguous to any permitted landfill which is receiving solid waste when the director determines that corrective action is necessary are not eligible for funding as contemplated by this subchapter.

(e)(1) An owner or operator of a permitted landfill shall establish and at all times maintain financial assurance for the post-closure maintenance of the landfill. At a minimum, each owner or operator shall provide no less than twenty percent (20%) of estimated post-closure maintenance costs through a financial mechanism readily negotiable by the department to cash funds, for example, a letter of credit, surety bond, irrevocable trust, insurance, or other mechanism approved by the department, upon default by the owner and operator of post-closure obligations.

(2) If, after proper closure of a landfill, the department reasonably determines that the owner or operator cannot be located or cannot otherwise satisfy, in whole or part, post-closure maintenance obligations, the department is authorized to expend the necessary funds from the Landfill Post-Closure Trust Fund to satisfy the requirements of state and federal law and to prevent or abate releases to the environment.

(3) If the department is required to expend funds from the Landfill Post-Closure Trust Fund due to the failure of an owner or operator to meet the requirements of this subsection, the department shall pursue collection and recovery of the funds by issuing an administrative order notifying the owner or operator by certified mail at the last known address of the owner or operator of the action taken by the department and the amount of funds expended from the Landfill Post-Closure Trust Fund and that the administrative order may be appealed in accordance with the department's regulations.

**History.** Acts 1991, No. 747, § 1; 1993, No. 938, §§ 2, 3; 1999, No. 1210, § 2; No. 1127, § 2; 1995, No. 511, § 4; 1997, 2005, No. 1962, § 18.

### **8-6-1003. Landfill disposal fees.**

(a)(1) In addition to any other fee provided by law, there is imposed on each landfill permittee a landfill disposal fee of fifteen cents (15¢) for



each uncompacted cubic yard of solid waste and thirty cents (30¢) for each compacted cubic yard of solid waste received at the landfill.

(2) If a landfill permittee is required or chooses to operate on a weight basis, the landfill disposal fee shall be one dollar (\$1.00) for each one (1) ton (2,000 lbs.) of solid waste received at the landfill.

(b) The landfill permittee referenced in subsection (a) of this section shall use the weight basis in determining the fee for the disposal or transportation of ash.

(c) Solid waste collected during the annual Keep Arkansas Beautiful and Keep America Beautiful campaigns that are sponsored by the Keep Arkansas Beautiful Commission is exempt from the landfill disposal fee under this section.

**History.** Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1997, No. 374, § 1; 2001, No. 217, § 3; 2009, No. 189, § 5. **Amendments.** The 2009 amendment added (c).

### RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

### 8-6-1004. Collection of fees.

Fees imposed pursuant to the provisions of this subchapter shall be collected as follows:

(1) Each landfill permittee and each transporter shall submit to the Arkansas Department of Environmental Quality on or before January 15, April 15, July 15, and October 15 of each year a quarterly report which accurately states the total weight or volume of solid waste received at the landfill or transported out of state during the previous quarter;

(2) On or before January 15, April 15, July 15, and October 15 of each year, each landfill permittee and solid waste transporter shall pay to the department the full amount of such disposal fees due for the previous quarter; and

(3) The disposal and transportation fees collected pursuant to this section shall be special revenues and shall be deposited in the State Treasury to the credit of the Landfill Post-Closure Trust Fund.

**History.** Acts 1991, No. 747, § 1; 1993, No. 1127, § 2; 1995, No. 511, § 5.

### 8-6-1005. Penalties.

Failure of the permittee or transporter to pay the fees assessed by the Arkansas Department of Environmental Quality shall provide grounds for administrative or civil enforcement action. Sanctions may include civil penalties as provided in the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the revocation of the solid waste disposal or transporter permit.

**History.** Acts 1991, No. 747, § 1; 1993, No. 1127, § 2.

## SUBCHAPTER 11 — LANDFILL SERVICE AREAS

### SECTION.

8-6-1101. Findings.

8-6-1102. Purpose — Construction.

8-6-1103. Definitions.

8-6-1104. Transportation of solid waste outside district.

### SECTION.

8-6-1105. Expansion outside district — Exemption.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter which was enacted subsequently.

**Publisher's Notes.** Acts 1989, No. 870 and Acts 1991, No. 319 were held to be unconstitutional as applied to solid wastes originating outside the State of Arkansas in *Southeast Ark. Landfill, Inc. v. Arkansas Dep't of Pollution Control and Ecology*, 981 F.2d 372 (8th Cir. 1992).

**Effective Dates.** Acts 1991, No. 319, § 9: Mar. 1, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that some areas of the state are facing serious shortages of solid waste landfill capacity to the point of crisis; additional time is needed to develop regional solid waste management and planning and to increase the landfill capacity in the state to a level sufficient for the future needs of the state; and in order to address the serious financial and envi-

ronmental problems, temporary restrictions should be placed on the expansion of landfill service areas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1993, No. 619, § 8: Mar. 22, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that expediting the transfer of solid waste between solid waste management districts will significantly benefit the districts, the citizens of Arkansas, and the environment; and this act is necessary for the immediate preservation of the public peace, health and safety; therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

## RESEARCH REFERENCES

**Ark. L. Rev. Note,** In re Southeast Arkansas Landfill and the Commerce Clause: Welcome to the Arkansas Depository for Solid Waste, 46 Ark. L. Rev. 1027.

**U. Ark. Little Rock L.J.** Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

## CASE NOTES

### Constitutionality.

Those portions of Act 870 of 1989 and Act 319 of 1991 which discriminate on their face against solid waste originating outside the State of Arkansas violate the

Commerce Clause (U.S. Const., Art. 1, § 8) and are thus unconstitutional. *Southeast Ark. Landfill, Inc. v. Arkansas Dep't of Pollution Control & Ecology*, 981 F.2d 372 (8th Cir. 1992).

**8-6-1101. Findings.**

The General Assembly makes the following findings:

(1) As of July 30, 1990, the landfill capacity in Arkansas stood at about four and three-tenths (4.3) years of landfill life for sixty-three (63) municipal solid waste landfills;

(2) The present landfill capacity in the State of Arkansas is inadequate and a landfill capacity of at least ten (10) years should be developed for solid waste generated in this state in order to provide sufficient protection for the public health, welfare, and safety and to provide for the future development of the state;

(3) Adequate solid waste management planning has not been possible because of the lack of accurate statistics on industrial waste generation, landfill capacity, and use;

(4) Legislation has been introduced in this session of the General Assembly to:

(A) Require better reporting by industries using landfills;

(B) Assist the development of adequate landfill capacity through regional funding and grants; and

(C) Lengthen the usable life of existing landfills through recycling; and

(5) Temporary restrictions on the disposal of out-of-district solid waste should be imposed for the purpose of:

(A) Providing additional time for districts to obtain information necessary for regional planning;

(B) Encouraging districts to develop regional solid waste management solutions; and

(C) Developing a statewide and district landfill capacity of at least ten (10) years.

**History.** Acts 1991, No. 319, § 1.

**8-6-1102. Purpose — Construction.**

(a) As directed by Acts 1989, No. 870, the Arkansas Solid Waste Fact Finding Task Force has presented its findings and proposals. The task force report identifies serious and chronic deficiencies in how solid waste is managed in this state. The report is accompanied by legislative proposals which reaffirm the state's commitment to regional solid waste management embodied in Acts 1989, No. 870, and aim, through extensive revision of current law, to make regionalization a reality. The report and the task force's legislative proposals demonstrate that the state does not have sufficient understanding or control of the overall solid waste stream to realize its goal of regional solid waste management, much less a responsible recycling and source reduction program. These goals cannot be attained if the waste streams assigned to the respective regional planning districts continue to change during the crucial planning and development stages.

(b) Federal law, 42 U.S.C. § 6941 et seq., has placed the burden of implementing regional solid waste management strategies upon the



states. To this end, the General Assembly has embarked upon the difficult task of addressing the complex solid waste needs of the state on a regional basis. After giving due regard to all of the contingencies and exigencies inherent in planning a regional solid waste strategy, and after accommodating existing business expectations based upon waste streams originating from outside the Acts 1989, No. 870 solid waste planning districts, the General Assembly hereby enacts the following emergency measure as an essential component of its efforts to reform solid waste management in Arkansas.

(c) This subchapter should be given a liberal construction so as to effectuate its remedial intent.

**History.** Acts 1991, No. 319, § 2.

referred to in this section is codified as

**Publisher's Notes.** Acts 1989, No. 870, § 8-6-701 et seq.

### 8-6-1103. Definitions.

As used in this subchapter:

(1) "Board" means a regional solid waste management board established pursuant to § 8-6-701 et seq., or a successor board to the powers of either type of board;

(2) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "District" means a regional solid waste planning district or a solid waste services area as established by § 8-6-701 et seq., or a successor district of a regional solid waste planning district or solid waste service area;

(5) "Landfill" means a permitted landfill under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.; and

(6) "Solid waste" shall have the same meaning as provided by § 8-6-702.

**History.** Acts 1991, No. 319, § 3; 1999, No. 1164, § 78.

### 8-6-1104. Transportation of solid waste outside district.

In any instance where a landfill has a useful life of less than one and one-half (1½) years, the Director of the Arkansas Department of Environmental Quality may authorize any city utilizing that landfill to transport solid waste outside the boundaries of the district. Provided, however, in no instance shall that authority be extended after a landfill with a useful life in excess of one and one-half (1½) years becomes available within the district for accepting the solid waste of the city.

**History.** Acts 1991, No. 319, § 5; 1999, No. 1164, § 79.

**8-6-1105. Expansion outside district — Exemption.**

(a) This section shall apply until the later of:

(1) July 1, 1992; or

(2) Until the capacity of landfills in both the district and the state reach a ten-year capacity.

(b) Landfill capacity shall be determined by the Director of the Arkansas Department of Environmental Quality.

(c)(1) No existing landfill shall expand its service area outside the district in which it is located, except that existing landfills that on March 1, 1989, do not serve areas outside their respective districts shall not accept more than fifty (50) tons per day of solid waste originating from outside their districts.

(2) Existing landfills that on March 1, 1989, serve areas outside of their respective districts shall not increase the total amount of solid waste originating from outside their districts by more than twenty percent (20%) annually of the total volume of solid waste received at the facility from outside their districts. The amount of solid waste shall be determined by weight.

(3) No new landfill shall be allowed to receive solid waste outside the boundaries of the district in which it is located unless it is a landfill where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry or of wastes of a similar kind or character and such industry has commenced, prior to March 1, 1991, the process for obtaining a permit by issuing notice to the local government having jurisdiction, as required under the rules and regulations of the Arkansas Department of Environmental Quality.

(4)(A) No new applications for landfill permits seeking to dispose of solid waste originating outside of a district or that propose to dispose of solid waste originating from outside such district shall be accepted or processed by the Arkansas Pollution Control and Ecology Commission or a board, unless such applications were pending before the department on March 1, 1989.

(B) Provided, the prohibition contained in this subsection shall not apply to new applications for landfill permits if the landfill is one where a private industry bears the expense of operating and maintaining the landfill solely for the disposal of wastes generated by the industry, or of wastes of a similar kind or character, and such industry has commenced, prior to March 1, 1991, the process for obtaining a permit by issuing notice to the local government having jurisdiction, as required under the rules and regulations of the department.

(d) The director may grant an exemption from this section for solid waste brought into a district for the purpose of recycling or because the district where solid waste is generated does not have a landfill that meets applicable state or federal regulations. The exemption shall be subject to such terms and conditions as the director may deem appropriate.

(e) A successor district may transport solid waste to any one of the original districts of which the members of the successor district were a part.

**History.** Acts 1991, No. 319, § 4; 1993, No. 619, § 4; 1999, No. 1164, § 80.

SUBCHAPTER 12 — DISPOSAL OF INCINERATOR ASH AND PETROLEUM-CONTAMINATED SOILS

SECTION.	SECTION.
8-6-1201. Legislative intent.	Petroleum-contaminated soils.
8-6-1202. Exceptions.	
8-6-1203. Definitions.	8-6-1206. Adoption of disposal criteria —
8-6-1204. Powers and duties.	Incinerator ash.
8-6-1205. Adoption of disposal criteria —	8-6-1207. Penalties.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter which was enacted subsequently.

**Effective Dates.** Acts 1991, No. 1183, § 11: Apr. 10, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that the regulation of potentially harmful materials, specifically incinerator ash and petroleum contaminated soils, is essential to the protection and preservation of the public health and the environment. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1992 (1st Ex. Sess.), No. 48, § 6: Mar. 17, 1992. Emergency clause pro-

vided: “It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas meeting in the First Extraordinary Session of 1992 that incinerator ash and petroleum contaminated soils disposed of in landfills are potentially harmful materials to the environment of the State of Arkansas and thereby their regulation are essential to the preservation and protection of the environment and ecology of the State of Arkansas. Therefore, in order to more effectively regulate these environmental hazards, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

8-6-1201. Legislative intent.

The purpose of this subchapter is to protect the public health and the state’s environmental quality by establishing standards and promulgating regulations by the Arkansas Pollution Control and Ecology Commission for the disposal of potentially harmful materials, specifically incinerator ash and petroleum-contaminated soils in a permitted landfill.

**History.** Acts 1991, No. 1183, § 1.



**8-6-1202. Exceptions.**

The provisions of this subchapter shall not apply to persons who produce incinerator ash with an input capacity of twelve (12) tons of materials or less per day or to manufacturing facilities which utilize solid waste generated on the premises of that facility in incinerators, boilers, or industrial furnaces.

**History.** Acts 1991, No. 1183, § 4; 1992 (1st Ex. Sess.), No. 48, § 1.

**8-6-1203. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Incinerator ash" means any tangible residue resulting from the incineration of solid waste;

(2) "Monofill" means a waste disposal facility specifically designed for the sole disposal of incinerator ash;

(3) "Person" means any state agency, municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity; and

(4) "Petroleum-contaminated soils" means those soils which have been physically, chemically, or biologically altered by gasoline, diesel, kerosene, heating oil, jet fuel, or any other petroleum product.

**History.** Acts 1991, No. 1183, § 2.

**8-6-1204. Powers and duties.**

The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To adopt rules and regulations to meet the purposes of this subchapter;

(2) To adopt specific design and operational criteria for the operation of a monofill;

(3) To adopt criteria for the disposal of petroleum-contaminated soil in landfills; and

(4) To administer and enforce all laws, rules, and regulations relating to this subchapter.

**History.** Acts 1991, No. 1183, § 3.

**8-6-1205. Adoption of disposal criteria — Petroleum-contaminated soils.**

(a)(1) Within eighteen (18) months after the date of enactment of this subchapter, the Arkansas Pollution Control and Ecology Commission shall, after consultation with the Advisory Committee on Petroleum Storage Tanks, adopt criteria for the disposal of petroleum-contaminated soils in landfills that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) In adopting such criteria, the commission shall follow the procedures applicable to the adoption of rules and regulations under § 8-4-202(a).

(b) The criteria adopted by the commission shall:

(1) Define the characteristics of the petroleum-contaminated soils that can be disposed of in permitted landfills;

(2) Define the characteristics of landfills suitable for receipt of petroleum-contaminated soils;

(3) Assure, to the extent practicable, that reasonable landfill capacity is available for disposal of petroleum-contaminated soils;

(4) Consider the financial impact of such criteria on small businesses which need to dispose of petroleum-contaminated soils;

(5) Consider whether affordable alternatives are available for the treatment or disposal of petroleum-contaminated soils; and

(6) Be protective of public health and the environment.

(c) The criteria adopted by the commission shall include a description of appropriate methods for collecting samples and conducting analyses of petroleum-contaminated soils that may be disposed of in permitted landfills to assure the representativeness of the soil mass.

**History.** Acts 1991, No. 1183, § 5.

ter,” Acts 1991, No. 1183, became effective on April 10, 1991.

**Publisher’s Notes.** In reference to the term “date of enactment of this subchap-

### **8-6-1206. Adoption of disposal criteria — Incinerator ash.**

(a)(1) On or before July 1, 1992, the Arkansas Pollution Control and Ecology Commission shall adopt criteria for the disposal of incinerator ash in landfills that are permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(2) In adopting such criteria, the commission shall follow the procedures applicable to the adoption of rules and regulations under § 8-4-202(a).

(b) The criteria adopted by the commission shall include, but not be limited to, the monofilling of incinerator ash.

(c)(1) The monofill requirement created under this subchapter does not apply if the owner or operator demonstrates to the Arkansas Department of Environmental Quality that the incinerator ash to be disposed of in the Class 1 landfill is received from incinerators that only combust yard waste or other natural vegetative debris, including vegetative storm debris, tree trimmings, and land-clearing debris.

(2) All other requirements adopted under this subchapter apply to the disposal of incinerator ash described in this subsection.

(3) As used this subsection, “other vegetative debris” does not include any solid waste that can be classified as industrial, commercial, or construction and demolition waste.

**History.** Acts 1991, No. 1183, § 6; 1992 (1st Ex. Sess.), No. 48, § 2; 2011, No. 342, § 1.

**Amendments.** The 2011 amendment added (c).

**8-6-1207. Penalties.**

Any person who violates the provisions of this subchapter shall be subject to the civil penalties prescribed in § 8-6-204.

**History.** Acts 1991, No. 1183, § 7.

**SUBCHAPTER 13 — COMMERCIAL MEDICAL WASTE INCINERATION FACILITIES****SECTION.**

8-6-1301. Legislative findings and purpose.

8-6-1302. Definitions.

8-6-1303. Construction.

8-6-1304. Applicability.

**SECTION.**

8-6-1305. Permits — Procedure generally.

8-6-1306. Permits — Limitations.

8-6-1307. Financial assurance guarantees.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter which was enacted subsequently.

**Effective Dates.** Acts 1992 (1st Ex. Sess.), No. 75, § 11: Mar. 20, 1992. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly that the issuance of commercial medical waste incineration permits will have a significant impact on the citizens and environment of the State of Arkansas; that the Environmental Protection Agency is expected to issue rules and regulations pertaining to commercial medical waste incineration facilities in September of 1993; that it is necessary to delay the issuance of those permits until these federal regulations have been promulgated; that sufficient notification to the public of permit applications is necessary to protect the public interest; and that certain regulations governing the location of commercial medical waste incineration facilities are necessary to protect the public health and welfare. Therefore,

an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1995, No. 496, § 12: Mar. 1, 1995. Emergency clause provided: “The General Assembly finds that both scientific understanding of the effects of medical waste incineration and the regulatory mechanisms for assuring safe operations are in a state of flux. The General Assembly deems this Act necessary to assure that commercial medical waste incineration facilities are sited and operated in accordance with the latest applicable laws and regulations, and that the operators of such facilities have the financial means necessary to maintain safe operations. Therefore, an emergency is hereby declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

**RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Legislative Survey, Environmental Law, 16 U. Ark. Little Rock L.J. 111.



**8-6-1301. Legislative findings and purpose.**

(a) The General Assembly has found that there is an increased interest in obtaining permits from the Arkansas Department of Environmental Quality for the purpose of constructing and operating commercial medical waste incineration facilities. The federal Clean Air Act, 42 U.S.C. § 7429(a)(1)(C), has directed the United States Environmental Protection Agency to promulgate regulations concerning these facilities. The General Assembly has determined that it is necessary to delay the issuance of permits to these facilities until those regulations are promulgated in order to ensure that any permits issued will be based on the latest available information concerning technology and safety as set forth in the federal regulations.

(b) As scientific understanding of the potential public health and environmental impacts from large-scale medical waste incineration evolves, the General Assembly finds that continued caution regarding the development of commercial-scale medical waste incineration facilities is necessary in order to protect the public health, safety, and welfare. Even though medical waste incinerators constitute major sources of potentially harmful emissions into the air, the United States Environmental Protection Agency has yet to promulgate technology standards necessary to assure safe operation. In the meantime, highly speculative ventures seek to profit from the regulatory uncertainty by promoting undercapitalized incineration facilities handling volumes of waste far in excess of that from the largest hospital.

(c) This subchapter seeks to protect the public welfare by assuring that:

(1) Commercial-scale medical waste incinerators beginning operation after March 1, 1995, will be in compliance with the most recent operating standards and regulations;

(2) The owner or operator of any commercial-scale medical waste incinerator beginning operation after March 1, 1995, shall demonstrate financial assurances necessary to ensure the proper operation, maintenance, and closure of such facilities;

(3) A transfer of ownership or control of any commercial-scale medical waste will prompt regulatory officials to apply permitting standards and procedures as stringent as those applicable for the issuance of a new permit;

(4) Generators of medical waste are encouraged to follow the hierarchy of waste management goals set out in the Arkansas Pollution Prevention Act, § 8-10-201 et seq.; and

(5) Both generators of medical waste and regulatory officials will give proper consideration to alternative technologies for treating medical waste other than incineration.

**History.** Acts 1992 (1st Ex. Sess.), No. 75, § 1; 1995, No. 496, § 1; 1999, No. 1164, § 81.

**8-6-1302. Definitions.**

As used in this subchapter:

(1) "Commercial medical waste incineration facility" means any facility accepting medical waste materials for treatment and disposal by incineration from an off-site source and operating the treatment and disposal facility as a business for profit;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "Occupied structure" means a building or other structure:

(A) Where any person lives or carries on a business or other calling;

(B) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation;

(C) Which is customarily used for overnight accommodation of persons whether or not a person is actually present. Each unit of a structure divided into separate units designed for occupancy is itself an occupied structure; or

(D) Which has not yet been constructed or completed but for which a building permit, where applicable, has been issued and is valid on the date the application for the permit to construct and operate a commercial medical waste incineration facility is filed; and

(5) "Person" means any individual or legal entity.

**History.** Acts 1992 (1st Ex. Sess.), No. § 1; 1995, No. 496, § 7; 1999, No. 1164, 75, § 2; 1993, No. 491, § 1; 1993, No. 861, § 82.

**8-6-1303. Construction.**

(a) Nothing in this subchapter shall be construed to affect the authority of cities and counties to enact zoning regulations or procedures that control the location of medical waste facilities or sites.

(b) This subchapter shall be liberally construed so as to achieve remedial intent.

**History.** Acts 1992 (1st Ex. Sess.), No. 75, § 6; 1995, No. 496, § 1.

**8-6-1304. Applicability.**

(a) This subchapter shall not apply to medical waste incineration facilities constructed and operating before March 20, 1992, or to medical waste incineration facilities operated by health care facilities for the purpose of disposing of medical waste.

(b) This subchapter shall not apply to permits for renovations to medical waste incineration facilities constructed and operating before March 20, 1992, either through modification or additional construction, provided that such renovations are for the purpose of:

(1) Complying with the regulations or standards imposed by local, state, or federal government agencies; or

(2) Adding additional waste disposal capacity to a medical waste incineration facility constructed and operating before March 20, 1992.

(c)(1) The requirements of this subchapter shall apply to any commercial medical waste incineration facility that has not initiated operation prior to March 1, 1995.

(2) For the purposes of construing this subsection and the application of this subchapter, initiation of operations has not occurred until the Arkansas Department of Environmental Quality has approved the installation of all permitted pollution control equipment and the facility is receiving medical waste for incineration.

**History.** Acts 1992 (1st Ex. Sess.), No. 75, § 7; 1995, No. 496, §§ 2, 3.

### **8-6-1305. Permits — Procedure generally.**

(a) The Arkansas Department of Environmental Quality shall not accept any applications or issue any permits for the construction or operation of any commercial medical waste incineration facilities until the federal regulations promulgated pursuant to 42 U.S.C. § 7429(a)(1)(C) become effective or the United States Environmental Protection Agency's dioxin reassessment is finalized, whichever is later.

(b) Any person applying for a permit or a permit modification to construct and operate a commercial medical waste incineration facility shall complete the following criteria at least thirty (30) days prior to submitting a permit application to the department:

(1) Written notification by certified mail to each property owner and resident of any property adjacent to the proposed site of the intent to apply for a permit or permit modification; and

(2) Publication of a public notice in the largest newspaper published in each county where the property which is the subject matter of the proposed facility permit or permit modification is located, and in at least one (1) newspaper of statewide circulation, of the intent to apply for a permit or a permit modification to construct and operate a commercial medical waste incineration facility.

(c) The department shall provide written notice by certified mail of the proposed permit or permit modification to the mayor of the city and the county judge of the county where the property which is the subject matter of the permit application is located.

(d) The department shall conduct a public hearing in the county in which the facility is to be located prior to the issuance of a final permit.

(e)(1)(A) Notwithstanding the general provisions of other laws, permits for the construction or operation of medical waste incineration facilities shall not be transferable upon a change in ownership or control of a facility.

(B) Prior to any change in ownership or control of a medical waste incineration facility, the proposed new owner must apply for a new permit and abide by the requirements of § 8-1-106.



(C) The department shall process the application as one for a new permit and apply the most current statutes, regulations, technological standards, and operational controls as conditions precedent for granting a permit or operational authority.

(2)(A) Any agreement or contract, written or oral, for a future transfer of operational control or ownership of a permitted commercial medical waste incineration facility or such an agreement or contract contingent upon the department's approval shall be subject to immediate disclosure to the department pursuant to § 8-1-106.

(B) Upon such disclosure, the department shall cause the intent to transfer ownership or control to be publicly noticed and produce the disclosure documentation required by § 8-1-106 for public inspection.

(C) After a reasonable period for public review, the department shall issue a written determination as to whether the intended transfer of ownership or control should be approved, subject to the right of appeal provided by § 8-1-106(e).

(D) During the pendency of the department's and the public's review of the disclosure materials required by this section, any actions taken by the permittee or proposed transferee are at their own risk, and shall not be construed by the department or the Arkansas Pollution Control and Ecology Commission as accruing equities in their favor.

(3) For the purposes of this subsection:

(A) "Control" shall be presumed to reside with the owner, as defined herein, unless circumstances indicate that a person or entity other than an employee or agent of the owner is exercising ultimate decision-making authority regarding the construction or operation of a commercial medical waste incineration facility; and

(B) "Corporate ownership" shall be defined as a controlling or majority interest in a commercial medical waste incineration facility, either through outright ownership of stock or other indicia of title, or any equitable right to such title as construed from the totality of the circumstances.

(4) Any violation of this subsection shall constitute grounds for permit revocation and imposition of the civil and criminal penalties authorized by § 8-4-103.

(f)(1) If the original permit was issued more than one (1) year prior to the initiation of incineration activities at a commercial medical waste incineration facility, the department may review the conditions of the permit to determine whether good cause exists for modifying operating parameters to assure the maximum feasible control efficiency of emissions.

(2) Any modifications proposed by the department must be supported by appropriate references to the scientific and engineering literature or documented studies conducted by the department.

**8-6-1306. Permits — Limitations.**

(a) No permits may be issued by the Arkansas Department of Environmental Quality for the construction or operation of a commercial medical waste incineration facility in which any of the following factors are present:

(1) The location of the facility is within one (1) mile of any occupied structure;

(2) The location of the facility is within an active fault zone or an area of high earthquake potential;

(3) The location of the facility is within a regulatory floodway, as adopted by communities participating in the National Flood Program managed by the Federal Emergency Management Administration Commission; or

(4) The location of the facility is within wetland areas.

(b) Exceptions may be made to these requirements only by obtaining written permission from all real property owners and residents of any property adjacent to the site of the proposed commercial medical waste incineration facility.

**History.** Acts 1992 (1st Ex. Sess.), No. 75, § 5.

**8-6-1307. Financial assurance guarantees.**

(a)(1) Prior to initiating operations at a commercial medical waste incineration facility, the owner or operator must demonstrate:

(A) Evidence of liability insurance in such amount as the Arkansas Department of Environmental Quality may determine to be necessary for the protection of public health and safety and protection of the environment; and

(B) Evidence of financial responsibility in such form and amount as the department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures can be taken to prevent present and future damage to the public health and safety and to the environment.

(2) In determining the adequacy of the evidence submitted, the department may consider credible evidence indicating that the permittee is undercapitalized, insolvent, or otherwise financially incapable of assuring environmentally sound operations at the permitted facility.

(b) In determining the nature of financial assurance guarantees required by subsection (a) of this section, the department and the permittee shall follow, to the extent applicable, the federal regulations governing financial assurance of facilities governed by Subtitle D of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

**History.** Acts 1995, No. 496, § 6.

**SUBCHAPTER 14 — RESIDENTIAL USE OF LANDFILLS**

## SECTION.

8-6-1401. Purpose.

8-6-1402. Powers and duties.

8-6-1403. Rules and regulations.

## SECTION.

8-6-1404. Land use.

8-6-1405. Violations.

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**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter which was enacted subsequently.

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**8-6-1401. Purpose.**

The purpose of this subchapter is to protect the public health and safety by requiring the Arkansas Pollution Control and Ecology Commission to establish standards and promulgate regulations regarding the post-closure use of solid waste landfills and adjacent areas for residential purposes.

**History.** Acts 1993, No. 718, § 1.

**8-6-1402. Powers and duties.**

The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To adopt rules and regulations to meet the purposes of this subchapter;

(2) To adopt specific design criteria on the post-closure of solid waste landfills to limit the types and kinds of uses of closed landfills to protect the safety of the environment and limit the possible exposure of the public to any harm; and

(3) To administer and enforce all laws, rules, and regulations relating to this subchapter.

**History.** Acts 1993, No. 718, § 3.

**8-6-1403. Rules and regulations.**

Within six (6) months after August 13, 1993, the Arkansas Pollution Control and Ecology Commission shall adopt rules and promulgate regulations for specific criteria:

(1) To limit any person, partnership, company, corporation, or other entity from building, erecting, or constructing any house or building for residential purposes upon any land used as or which has been used as a solid waste landfill; and

(2) To identify those houses and other buildings located on any land used as or which has been used as a solid waste landfill and are currently being used for residential purposes and to limit their future use for residential purposes.



**History.** Acts 1993, No. 718, § 3.

### 8-6-1404. Land use.

(a) Six (6) months after August 13, 1993, it shall be unlawful for any person, partnership, company, corporation, or other entity to build, erect, or construct any house, home, or building to be used for residential purposes upon any land used as or which has been used as a solid waste landfill permitted under the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) On August 13, 1993, those houses, homes, and other buildings located on any land used as or which has been used as a solid waste landfill and which are currently being used for residential purposes shall be allowed to remain on that land and may be used for residential purposes.

(c)(1) The prohibitions of this subchapter and any rules or regulations promulgated under its authority shall be limited to application to the area of the land which was specifically used as a landfill for the placement and disposal of solid waste.

(2) The prohibitions of this subchapter and any rules and regulations promulgated under its authority shall not apply to landfills or the land which was specifically used as a landfill more than twenty-five (25) years before August 13, 1993.

**History.** Acts 1993, No. 718, § 2.

### 8-6-1405. Violations.

Any person who violates the provisions of this subchapter shall be subject to the civil penalties prescribed in § 8-6-204.

**History.** Acts 1993, No. 718, § 4.

## SUBCHAPTER 15 — SITING HIGH IMPACT SOLID WASTE MANAGEMENT FACILITIES

#### SECTION.

8-6-1501. Legislative intent.

8-6-1502. Definitions.

8-6-1503. Department's permitting authority.

#### SECTION.

8-6-1504. Presumption against certain sites.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter, which was enacted subsequently.

**Publisher's Notes.** Acts 1993, No. 1263, § 5, provided: “This act repeals and supersedes the provisions of Arkansas Code 8-6-218.”

**Effective Dates.** Acts 2005, No. 1781, § 3: Apr. 6, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Act 1263 of 1993 is an act that is important to public health and welfare of citizens located near high impact solid waste management facilities. Ambiguities

in the current language of Act 1263 of 1993 impair the ability of the Arkansas Department of Environmental Quality to protect the public health and welfare and a delay in the effective date of this act could work irreparable harm upon the ability of the Arkansas Department of Environmental Quality to effectively administer its regulatory functions and properly implement the public health protections provided through Act 1263 of 1993. Therefore, an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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### 8-6-1501. Legislative intent.

(a) Through extensive legislation since 1989, the State of Arkansas has made significant strides toward a comprehensive and regionalized approach to solid waste management. The General Assembly recognizes the need to develop viable facilities for managing and disposing of the state's solid waste. This subchapter should be construed as a complement to the state's overall regionalization strategy by encouraging an equitable and efficient dispersal of solid waste management facilities to serve the needs of all citizens.

(b) The General Assembly also acknowledges that, while solid waste management facilities are essential, certain types of facilities impose specific burdens on the host community. National trends indicate a tendency to concentrate high impact solid waste disposal facilities in lower-income or minority communities. Such facilities may place an onus on the host community without any reciprocal benefits to local residents. The purpose of this subchapter is to prevent communities from becoming involuntary hosts to a proliferation of high impact solid waste management facilities.

**History.** Acts 1993, No. 1263, § 1.

### 8-6-1502. Definitions.

As used in this subchapter:

(1) "Hazardous substance sites" has the same meaning as set out in § 8-7-503;

(2) "Hazardous waste" has the same meaning as set out in § 8-7-203;

(3)(A) "High impact solid waste management facility" means, excluding the facilities described in subdivision (3)(B) of this section, any solid waste landfill, any solid or commercial hazardous waste incinerator, and any commercial hazardous waste treatment, storage, or disposal facility.

(B) "High impact solid waste management facility" shall not include the following:

(i) Recycling or composting facilities;

(ii) Waste tire management sites;

(iii) Solid waste transfer stations;

(iv) Solid waste landfills which have applications pending for either increased or new acreage or provisions for additional services or increased capacity;

(v) A facility dedicated solely to the treatment, storage, or disposal of solid or hazardous wastes generated by a private industry when the private industry bears the expense of operating and maintaining the facility solely for the disposal of waste generated by the industry or wastes of a similar kind or character;

(vi) A facility or activity dedicated solely to a response action at a location listed by the state or federal government as a hazardous substance site;

(vii) An existing facility operating under the interim status of the federal Resource Conservation and Recovery Act or implementing regulations of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., or the Arkansas Hazardous Waste Management Code; or

(viii) Expansion of existing hazardous waste facilities under the federal Resource Conservation and Recovery Act or the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., either through increased acreage or provision for additional services or increased capacity;

(4) "Host community" means the closest governmental unit as measured along major facility access roads and highways exercising zoning authority encompassed within a twelve-mile radius of the site of a proposed high impact solid waste management facility;

(5) "Permitting" means any governmental authorization to proceed with construction or operation of a facility or activity required by either state law or local ordinance; and

(6)(A) "Solid waste" has the same meaning as set out in § 8-6-702.

(B) However, "solid waste" does not include hazardous waste as defined in this section.

**History.** Acts 1993, No. 1263, § 2; 2005, No. 1781, § 2.

**A.C.R.C. Notes.** Acts 2005, No. 1781, § 1, provided: "Legislative findings — Purpose.

"(a) For purposes of this act, the General Assembly finds:

"(1) Following the adoption of Acts 1993, No. 1263 the Arkansas Pollution Control and Ecology Commission adopted rules interpreting Act 1963, No. 1263 by defining host community as the closest community to the proposed high impact solid waste management facility; and

"(2) While this definition varied from the statutory definition, it did address a potential ambiguity in the statute.

"(b) The purpose of this act is to codify the interpretation that has been followed by the Arkansas Department of Environmental Quality since the adoption of Acts 1963, No. 1263."

**U.S. Code.** The Resource Conservation and Recovery Act of 1976, referred to in this section, is codified as 42 U.S.C. § 6901 et seq.



**8-6-1503. Department's permitting authority.**

The Arkansas Department of Environmental Quality shall not process any application for a permit subject to § 8-6-1504 until the affected local and regional authorities have issued definitive findings regarding the criteria set out in § 8-6-1504.

**History.** Acts 1993, No. 1263, § 4.

**8-6-1504. Presumption against certain sites.**

(a)(1) There shall be a rebuttable presumption against permitting the construction or operation of any high impact solid waste management facility, as defined in this subchapter, within twelve (12) miles of any existing high impact solid waste management facility.

(2) This presumption shall be honored by the Arkansas Department of Environmental Quality, the regional solid waste management board with jurisdiction over the site, and any other governmental entity with permitting or zoning authority concerning any facility.

(b) The presumption in subsection (a) of this section can be rebutted if any of the following is shown:

(1) That no other suitable site for such a facility is available within the regional solid waste management district because of the restraints of geology or any other factors listed at § 8-6-706(b)(2); or

(2)(A) That incentives have prompted the host community to accept the siting of the facility.

(B) Such incentives may include, without limitation:

(i) Increased employment opportunities;

(ii) Reasonable host fees not to exceed the prevailing state average;

(iii) Contributions by the facility to the community infrastructure, e.g. road maintenance, park development, and litter control;

(iv) Compensation to adjacent individual landowners for any assessed decrease in property values; or

(v) Subsidization of community services.

**History.** Acts 1993, No. 1263, § 3;  
1999, No. 1164, § 83.

**SUBCHAPTER 16 — FINANCIAL ASSURANCE****SECTION.**

8-6-1601. Purpose.

8-6-1602. Definitions.

8-6-1603. Procedures generally.

**SECTION.**

8-6-1604. Solid Waste Performance Bond Fund.

**Effective Dates.** Acts 1995, No. 510, § 5: Mar. 2, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that this statute is needed in order to make state require-

ments compatible with federal regulations. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in

full force and effect from and after its passage and approval.”

Acts 1997, No. 938, § 9: July 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the fiscal year begins on July 1, and that this emergency clause is necessary in order that uniformity can be achieved at the beginning of the 1997-1998 fiscal year for

money deposited into the Landfill Post-Closure Trust Fund and the moneys allocated from that fund for the Illegal Dump Eradication and Corrective Action Program. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997.”

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### 8-6-1601. Purpose.

(a) The purpose of this subchapter is to establish the procedure for posting financial assurance for all permitted solid waste management facilities.

(b) The procedure for issuance of permits for solid waste management facilities shall be as provided in the rules and regulations adopted by the Arkansas Pollution Control and Ecology Commission under this subchapter or as otherwise provided by law.

(c)(1) After an application to operate a facility has been reviewed and approved but before a permit is issued, the applicant shall post with the Arkansas Department of Environmental Quality, on forms prescribed by the department in accordance with the regulations issued under this subchapter, a corporate surety bond for performance or an acceptable alternative, such as a certificate of deposit or letter of credit payable to the department and conditioned upon faithful performance of all requirements of this subchapter, the regulations issued pursuant to this subchapter, and the permit, including, but not limited to, proper closure of the facility.

(2) Liability under the bond shall be for the duration of the disposal operation and for that period required to properly close the facility and for post-closure care, in accordance with the regulations issued by the commission.

**History.** Acts 1995, No. 510, § 1; 1999, No. 758, § 1; 1999, No. 1164, § 84.

### 8-6-1602. Definitions.

As used in this subchapter:

(1) “Active life” means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities;

(2) “Active portion” means that part of a facility or unit that has received or is receiving wastes and that has not been closed;

(3) “Closure plan” means a written plan that describes the steps necessary to close any solid waste management facility at any point

during its active life in accordance with the design requirements in rules and regulations issued pursuant to this subchapter, as applicable;

(4) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(5) "Department" means the Arkansas Department of Environmental Quality;

(6) "Disposal site" or "disposal facility" means any place at which solid waste is dumped, abandoned, or accepted or disposed of for final disposition by incineration, landfilling, composting, or any other method;

(7)(A) "Existing municipal solid waste landfill unit" means any municipal solid waste landfill unit that was receiving solid waste as of October 9, 1993, or April 9, 1994, as applicable to the Resource Conservation and Recovery Act, Subtitle D.

(B) Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management;

(8) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal, treatment, or processing of solid waste;

(9) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface, excluding manure and wastewater treatment sludge spreading operations, for agricultural purposes or for treatment and disposal;

(10) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit;

(11)(A) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile.

(B) A municipal solid waste landfill unit also may receive other types of Resource Conservation and Recovery Act, Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste, and industrial solid waste.

(C) Such a landfill may be publicly or privately owned.

(D) A municipal solid waste landfill unit may be a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion;

(12) "New municipal solid waste landfill unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993, or April 9, 1994, as applicable;

(13) "Operator" means the person responsible for the overall operation of a facility or part of a facility;

(14) "Owner" means the person who owns a facility or part of a facility;

(15) "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or other legal entity, however organized;



(16) "Post-closure plan" means a written plan that provides a description of monitoring and maintenance activities required in rules and regulations issued pursuant to this subchapter and includes the frequency with which these activities will be performed;

(17) "RCRA, Subtitle D" means the United States Environmental Protection Agency, Office of Solid Waste, Resource Conservation and Recovery Act and the August 1991 Addendum for the Final Criteria for Municipal Solid Waste Landfills, 40 CFR part 258;

(18) "Solid waste management system" means the entire process of storage, collection, transportation, processing, treatment, and disposal of solid waste and includes equipment, facilities, and operations designed for solid waste management activities, including recycling, source reduction, and the enforcement of solid waste management laws and ordinances;

(19) "State" means the State of Arkansas; and

(20)(A) "Surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with human-made materials, that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

(B) Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

**History.** Acts 1995, No. 510, § 1; 1999, No. 758, § 2; 1999, No. 1164, § 85.

**Publisher's Notes.** Acts 1973, No. 262, § 2, which amended Acts 1949, No. 472, § 2(b), referred to a Commission on Pollution Control and Ecology, which is probably the same commission as the Arkansas Pollution Control Commission created by Acts 1949, No. 472, § 2(a) as amended. However, Acts 1973, No. 262 did not change the name of the commission created in Acts 1949, No. 472, § 2(a) as Acts

1985, No. 930, § 1, in part, amended Acts 1949, No. 472, § 2, to create an Arkansas Pollution Control and Ecology Commission.

**U.S. Code.** The Resource Conservation and Recovery Act, referred to in this section, is codified as 42 U.S.C. § 6901 et seq. The reference to the Resource Conservation and Recovery Act, Subtitle D, is probably a reference to subchapter IV, State or Regional Solid Waste Plans, codified as 42 U.S.C. §§ 6941-6949a.

## 8-6-1603. Procedures generally.

### (a) FINANCIAL ASSURANCE FOR CLOSURE.

(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility requiring closure as required under the regulations issued pursuant to this subchapter and the permit during the active life of the facility in accordance with the closure plan.

(2) The cost estimate shall equal the cost of closing the largest area of any solid waste management facility requiring closure at any time during its active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(3) During the active life of the solid waste management facility, the owner or operator shall annually adjust the closure cost estimate for inflation.

(4)(A) The owner or operator shall establish financial assurance for closure of any permitted solid waste management facility in compliance with the regulations issued pursuant to this subchapter and the permit.

(B) The owner or operator of any solid waste management facility shall provide continuous financial assurance coverage for closure until released from financial assurance requirements by demonstrating compliance with regulations issued pursuant to this subchapter and the permit.

(C) The amount of financial assurance shall be in accordance with § 8-6-1002(e) and the regulations issued in that subsection.

(b) FINANCIAL ASSURANCE FOR POST-CLOSURE CARE.

(1) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care in compliance with the post-closure plan developed under the regulations issued pursuant to this subchapter and the permit.

(2) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(3) During the active life of the solid waste management facility and during the post-closure care period, the owner or operator shall annually adjust the post-closure cost estimate for inflation.

(4)(A) The owner or operator shall establish financial assurance for costs of post-closure care of any permitted solid waste management facility in compliance with regulations issued pursuant to this subchapter and the permit.

(B) The owner or operator of any solid waste management facility shall provide continuous financial assurance coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with regulations issued pursuant to this subchapter and the permit.

(c) FINANCIAL ASSURANCE FOR CORRECTIVE ACTION.

(1) The owner or operator, if required to undertake a corrective action program under regulations issued pursuant to this subchapter, shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with regulations issued pursuant to this subchapter.

(2)(A) The owner or operator of any solid waste management facility shall establish financial assurance for the most recent corrective action program.

(B) The owner or operator shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with regulations issued pursuant to this subchapter.

(d) ALLOWABLE MECHANISMS.

(1) The mechanisms used to demonstrate financial assurance under this section shall ensure that the funds necessary to meet the costs of

closure, post-closure care, and corrective action for known releases will be available whenever they are needed.

(2) The financial mechanisms shall be legally valid, binding, and enforceable under state and federal law.

(3) Owners and operators shall choose from the options specified in regulations issued pursuant to this subchapter.

(4)(A) A municipality or county that owns or operates a solid waste management facility receiving any non-Resource Conservation and Recovery Act, Subtitle D waste may, in lieu of a performance bond, execute a contract of obligation with the Director of the Arkansas Department of Environmental Quality.

(B) The contract of obligation shall be a binding agreement on the municipality or county, allowing the director or his or her designee to collect any general revenues being disbursed or to be disbursed from the state to the municipality or county on the failure of the municipality or county to fulfill the financial assurance requirements of this subchapter and regulations issued pursuant to this subchapter.

(C) To assure that adequate funds necessary to meet the estimated costs for closure and post-closure care of any non-Resource Conservation and Recovery Act, Subtitle D solid waste management facility are available whenever they are needed, the estimated annual general revenue amount pledged under a contract of obligation shall be at least equal to but not less than the estimated annual cost for closure and post-closure care to satisfy the financial assurance requirements for closure and post-closure care of this subchapter.

**History.** Acts 1995, No. 510, § 1; 1997, No. 938, § 4; 1999, No. 758, § 3; 1999, No. 1164, § 86.

#### **8-6-1604. Solid Waste Performance Bond Fund.**

(a) A Solid Waste Performance Bond Fund is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(b) In addition to any moneys appropriated by the General Assembly to the fund, there shall be deposited in the fund all forfeitures collected under this subchapter, federal government moneys designated to enter the fund, any moneys received by the state as a gift or donation to the fund, and all interest earned upon moneys deposited in the fund.

(c) The fund shall be administered by the Arkansas Department of Environmental Quality and will be used to accomplish remedial action, including closure of lands covered by performance bonds forfeited under this subchapter.

(d) Moneys received annually into the fund shall be used by the department for the administration of remedial actions performed as a result of this subchapter.



**History.** Acts 1995, No. 510, § 1; 1997, No. 938, § 5.

**Cross References.** Solid Waste Performance Bond Fund, § 19-5-1031.

SUBCHAPTER 17 — OPEN BURNING OF RESIDENTIAL YARD WASTE

SECTION.	SECTION.
8-6-1701. Definitions.	8-6-1703. Restrictions on open burning of yard wastes.
8-6-1702. State policy concerning disposal of yard waste.	8-6-1704. Private rights unchanged.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter which was enacted subsequently.

8-6-1701. Definitions.

- (1) “Open burning” shall mean, for the purposes of this subchapter, the incineration or combustion of waste materials as a method of disposal without any means to control the fuel/air ratio. None of the activities exempted from regulation as air pollution in § 8-4-305 or in regulations adopted by the Arkansas Pollution Control and Ecology Commission shall constitute “open burning”, provided such activities do not cause a fire or safety hazard; and
- (2) “Yard wastes” shall mean grass clippings, leaves, and shrubbery trimmings collected from residential property.

**History.** Acts 1997, No. 1151, § 1.

8-6-1702. State policy concerning disposal of yard waste.

It is the policy of this state that the open burning of residential yard waste should be discouraged and that alternative methods of yard waste disposal should be developed and made readily available to all citizens. In enforcement of this policy, state and local governments should first pursue educational and voluntary compliance efforts, with punitive sanctions reserved as the last resort to address instances of localized nuisances, fire and safety hazards, or refusal to obey reasonable demands to cease open burning when alternative disposal methods are available.

**History.** Acts 1997, No. 1151, § 2.

8-6-1703. Restrictions on open burning of yard wastes.

- (a) The open burning of yard wastes is discouraged. Enforcement shall be through informal educational efforts, unless such efforts are proven to be manifestly ineffective in preventing specific instances of open burning.

(b) No citation or civil fine shall be issued or levied against the owner of a private residence for the open burning of brush or yard waste unless such burning constitutes:

(1) A persistent or recurring offense to surrounding landowners, as determined by complaints to state or local officials;

(2) A fire hazard to surrounding property, as determined by appropriate local officials; or

(3) A safety hazard causing obscured vision on public roads or highways.

(c)(1) No citation or civil fine shall be issued or levied pursuant to the exception of subsection (b)(1) of this section unless first preceded by a warning order or other appropriate notification delivered to the alleged violator by certified mail, restricted delivery, or other appropriate mechanism of legal service, indicating that a local or state agency has received a complaint concerning open burning activities. Such order or notification need not reveal the identity of the complainants. This order or notification shall advise the alleged violator of alternatives to open burning of yard wastes.

(2) For the purposes of subsection (b)(1) of this section, "persistent or recurring" burning includes activities that are seasonal or annual. Each day of any event of open burning that continues following executed service of a warning order or notification may justify a citation or civil fine unless the alleged violator takes reasonably diligent measures to extinguish or control the fire.

(d) Nothing in this subchapter shall be construed as impairing the authority of local fire control officials to abate fire hazards through whatever regulatory mechanisms deemed necessary and appropriate.

(e) Nothing in this subchapter shall be construed as impairing the authority of the Arkansas Department of Environmental Quality to abate reasonably likely exceedances of National Ambient Air Quality Standards.

**History.** Acts 1997, No. 1151, § 3;  
1999, No. 1164, § 87.

## **8-6-1704. Private rights unchanged.**

This subchapter shall not be construed as impairing common law private rights of action.

**History.** Acts 1997, No. 1151, § 4.

## **SUBCHAPTER 18 — ANIMAL WASTE**

### **SECTION.**

8-6-1801. Management plan — Substitution.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter which was enacted subsequently.

**8-6-1801. Management plan — Substitution.**

If the Arkansas Department of Environmental Quality requires a person to obtain an animal waste management plan, including a permit application, prepared by a professional engineer as defined in § 17-30-101, the person may substitute a plan prepared under the supervision of a professional engineer employed by one (1) of the following agencies:

- (1) A conservation district;
- (2) The Arkansas Natural Resources Commission;
- (3) The Natural Resources Conservation Service; or
- (4) The University of Arkansas Cooperative Extension Service.

**History.** Acts 1997, No. 415, § 1; 1999, No. 1164, § 88; 2011, No. 897, § 9.

**Amendments.** The 2011 amendment inserted “as defined in § 17-30-101” in the introductory language; and substituted “Arkansas Natural Resources Commission” for “Arkansas Soil and Water Conservation Commission” in (2).

**SUBCHAPTER 19 — STATEWIDE SOLID WASTE MANAGEMENT PLAN ACT**

**SECTION.**

- 8-6-1901. Title.
- 8-6-1902. Findings.
- 8-6-1903. Definitions.

**SECTION.**

- 8-6-1904. Development and implementation.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-10 may not apply to this subchapter which was enacted subsequently.

**8-6-1901. Title.**

This subchapter may be known and cited as the “Statewide Solid Waste Management Plan Act”.

**History.** Acts 2001, No. 1376, § 1.

**RESEARCH REFERENCES**

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General Assembly Little Rock L. Rev. 475.

**8-6-1902. Findings.**

The General Assembly makes the following findings:

- (1) The Arkansas Department of Environmental Quality has been charged by the General Assembly with the responsibility of developing



the Statewide Solid Waste Management Plan which, where feasible, gives emphasis to regional planning;

(2) The difficult task of addressing the complex solid waste needs of the state on a regional basis has been accomplished by creating regional solid waste management boards;

(3) The need for a statewide plan remains; and

(4) The development and implementation of a statewide plan is necessary to protect the public's health and the state's environmental quality and to maximize the efficiency of regional solid waste management systems.

**History.** Acts 2001, No. 1376, § 1.

### **8-6-1903. Definitions.**

As used in this subchapter:

(1) "Board" or "regional board" means a regional solid waste management board established pursuant to § 8-6-701 et seq.;

(2) "Commission" means the Arkansas Pollution Control and Ecology Commission; and

(3) "Department" means the Arkansas Department of Environmental Quality.

**History.** Acts 2001, No. 1376, § 1.

### **8-6-1904. Development and implementation.**

(a) The Arkansas Department of Environmental Quality shall develop the Statewide Solid Waste Management Plan to establish minimum requirements for all regional solid waste management plans, including requirements for:

(1) Strategic planning;

(2) Reporting;

(3) Public notice and participation;

(4) Services; and

(5) Solutions to problems and issues.

(b) Within one (1) year after the Statewide Solid Waste Management Plan becomes final, each regional solid waste management board shall develop a solid waste management plan for departmental review and approval, which includes the minimum requirements contained in the Statewide Solid Waste Management Plan. This new plan shall replace any existing regional solid waste management plan previously developed, pursuant to § 8-6-717.

(c) Failure of any regional board to develop or implement any requirement contained in the Statewide Solid Waste Management Plan shall subject the regional board to:

(1) The penalty and enforcement provisions contained in § 8-6-204; or

(2) Denial, discontinuation, or reimbursement of any funding administered by the department to the regional board.

(d) The Arkansas Pollution Control and Ecology Commission may adopt reasonable rules and regulations necessary to implement or effectuate the purposes and intent of this subchapter.

**History.** Acts 2001, No. 1376, § 1.

## CHAPTER 7

### HAZARDOUS SUBSTANCES

#### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. HAZARDOUS WASTE MANAGEMENT ACT.
3. RESOURCE RECLAMATION ACT.
4. EMERGENCY RESPONSE FUND ACT. [REPEALED.]
5. REMEDIAL ACTION TRUST FUND ACT.
6. LOW-LEVEL RADIOACTIVE WASTE.
7. FEDERALLY LISTED HAZARDOUS SITES.
8. REGULATED SUBSTANCE STORAGE TANKS.
9. PETROLEUM STORAGE TANK TRUST FUND ACT.
10. PUBLIC EMPLOYEES' CHEMICAL RIGHT TO KNOW ACT.
11. VOLUNTARY CLEANUP.
12. ABANDONED PESTICIDE DISPOSAL.
13. PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSULTANT ACT.
14. CONTROLLED SUBSTANCES CONTAMINATED PROPERTY CLEANUP ACT.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

#### SUBCHAPTER 1 — GENERAL PROVISIONS

#### SECTION.

8-7-101. Civil liability of those assisting at accidents.

**Cross References.** Low-level radioactive waste, § 8-8-201 et seq.

Hazardous Materials Transportation Act of 1977, § 27-2-101 et seq.

## 8-7-101. Civil liability of those assisting at accidents.

(a) As used in this section, unless the context otherwise requires:

(1) "Discharge" means spillage, leakage, seepage, fire, explosion, or other release; and

(2) "Hazardous materials" means all materials and substances which are designated or defined as hazardous by law or regulation of this state or by law or regulation of the federal government.

(b) Notwithstanding any law to the contrary, no individual, partnership, corporation, association, or other entity shall be liable in civil damages as a result of acts taken, voluntarily and without compensation, in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, disposing of, or attempting to prevent, clean up, or dispose of any such discharge.

(c) This section shall not preclude liability for civil damages as the result of gross negligence. Reckless, willful, or wanton misconduct shall constitute gross negligence.

**History.** Acts 1983, No. 913, §§ 1-3; A.S.A. 1947, §§ 82-4225 — 82-4227.

## SUBCHAPTER 2 — HAZARDOUS WASTE MANAGEMENT ACT

### SECTION.

8-7-201. Title.

8-7-202. Purpose.

8-7-203. Definitions.

8-7-204. Criminal, civil, and administrative penalties.

8-7-205. Unlawful actions.

8-7-206. Private right of action.

8-7-207. Venue for legal proceedings.

8-7-208. Official agency for program and agreements.

8-7-209. Powers and duties of the department and commission generally.

8-7-210. Existing rules, regulations, etc.

8-7-211. Variances, waivers, or extensions.

8-7-212. Considerations in administration.

8-7-213. Procedure generally.

8-7-214. Emergency order for imminent hazard.

8-7-215. Permits — Requirement.

### SECTION.

8-7-216. Permits — Issuance generally — Interim operations.

8-7-217. Permits — Notice of hearing.

8-7-218. Permits — Compliance with subchapter, state and federal standards, regulations, etc.

8-7-219. Permits — Commercial facilities — Terms and conditions.

8-7-220. Permits — Duration — Renewal.

8-7-221. Permits — Revocation.

8-7-222. Permits — Hearing upon denial, revocation, or modification.

8-7-223. Location of landfill.

8-7-224. Rules for transporting hazardous waste.

8-7-225. Records and examinations.

8-7-226. Fees — Fund established.

8-7-227. Corrective action at permitted facilities and interim status facilities.



**Publisher's Notes.** Acts 1981, No. 523, § 7, provided that this act shall not repeal Acts 1979, No. 406 (§ 8-7-201 et seq.), either in whole or in part.

**Effective Dates.** Acts 1979, No. 406, § 19: Mar. 14, 1979. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly of the State of Arkansas that it is essential to the health, welfare and safety of the people of the State of Arkansas and to the minimizing of environmental damage that hazardous wastes be managed in an environmentally sound manner; that the knowledge and technology necessary for alleviating adverse health, environmental, and esthetic impacts resulting from current hazardous waste management and disposal practices are generally available at costs within the financial capabilities of those who generate such wastes, but that such knowledge and technology are not widely used; that existing practices and laws are inadequate; that this act and the implementation thereof are necessary to the accomplishment of the proper management of hazardous wastes and to the welfare of the State of Arkansas and her people. Therefore, an emergency is hereby declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 920, § 3: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that inequities now exist in the regulation of hazardous waste management in this state as a result of the permit term currently utilized, and it is essential to the health, welfare and safety of the people of the State of Arkansas and to the minimizing of environmental damage that hazardous wastes be managed in a sound manner which includes providing a sufficiently long permit term to insure that the proper investment of resources will be made in hazardous waste management facilities to provide for the proper management of hazardous wastes and to protect the welfare of the State of Arkansas and her people. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 435, § 5: Mar. 11, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Federal Environmental Protection Agency, Region 6, has indicated that the authorization for the hazardous waste management program for the State of Arkansas may be jeopardized for failure to provide court assessment of reasonable attorney fees and other litigation costs reasonably incurred by a substantially prevailing complainant in an action against the state for failure to comply with the Arkansas Freedom of Information Act in cases involving the Resource Conservation and Recovery Act of 1976 or other hazardous waste issues. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1057, § 9: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the sanctions imposed by current Arkansas law for environmental violations are among the least stringent in the nation. Thus, current law is inadequate to deter environmental violations, and in fact extends an implicit invitation to irresponsible industries. Protection of the environmental integrity of this state is essential to protect the public's health and economic well-being. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1235, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this act on July 1, 1991, is essential to the operation of the Hazardous Waste Management Program within the Department of Pollution Control and Ecology and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of the essential government programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preser-

vation of the public peace, health and safety shall be in effect from and after July 1, 1991."

Acts 1993, No. 1254, § 9: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to provide efficient and effective programs in the protection of the state's environment as mandated through the activities of the Department of Pollution Control and Ecology. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 340, § 6: Mar. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the provisions of the current statutes deny interim status to newly-regulated hazardous waste treatment, storage, and disposal facilities otherwise entitled to operate under federal laws and regulations. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Gov-

ernor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 1166, § 2: Mar. 22, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that a decision of the Arkansas Supreme Court has called into question the authority of the Arkansas Department of Environmental Quality to enforce provisions of hazardous waste management permits; that this authority is necessary for the department to receive delegation from the United States Environmental Protection Agency to administer the federal hazardous waste management permit program; and that this act is immediately necessary to allow the State of Arkansas to continue to administer the federal hazardous waste management permit program, to continue to receive federal grants, and to prevent the State of Arkansas from losing approximately one million dollars (\$1,000,000) in federal grant money. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Act 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and



the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act

being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively.”

RESEARCH REFERENCES

**Am. Jur.** 61A Am. Jur. 2d, Poll. Cont., §§ 244 et seq., 247 et seq.  
**Ark. L. Notes.** Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology Department and Commission, 1988 Ark. L. Notes 23.  
**U. Ark. Little Rock L.J.** Gales, Does Arkansas (or Anyone Else) Have a Valid Mixture or Derived-From Rule?, 15 U. Ark. Little Rock L.J. 697.

Weaver, The “Mixture” and “Derived-From” Rules Are Alive and Well in Arkansas, 15 U. Ark. Little Rock L.J. 713.  
Note, Environmental Law — Retroactive Vacature of the Mixture and Derived-From Rules Under Resource Conservation and Recovery Act, 15 U. Ark. Little Rock L.J. 727.

CASE NOTES

ANALYSIS

Causes of Action.  
Statute of Limitations.

**Causes of Action.**  
The legislature intended that the State be able to bring claims for natural resource damages under this subchapter and under §§ 8-4-101 et seq. and 8-6-201 et seq. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

**Statute of Limitations.**  
The environmental protection provisions found in this subchapter and §§ 8-4-101 et seq. and 8-6-201 et seq., are regulatory and protective rather than penal, and therefore the statute of limitations for penal actions, § 16-56-108, does not apply. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

8-7-201. Title.

This subchapter may be cited as the “Arkansas Hazardous Waste Management Act of 1979”.

**History.** Acts 1979, No. 406, § 1; A.S.A. 1947, § 82-4201.

CASE NOTES

**Cited:** Ensco, Inc. v. Dumas, 807 F.2d 743 (8th Cir. 1986).

8-7-202. Purpose.

It is the purpose of this subchapter and it is declared to be the policy of this state to:



(1) Protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes;

(2) Establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes;

(3) Assure the safe and adequate management of hazardous wastes within this state;

(4) Qualify the Arkansas Department of Environmental Quality to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976; and

(5) Afford the people of the State of Arkansas a voice in the permitting of hazardous waste facilities within their respective counties.

**History.** Acts 1979, No. 406, § 2; A.S.A. 1947, § 82-4202; Acts 1989, No. 643, § 1; 1999, No. 1164, § 89.      servation and Recovery Act of 1976, referred to in this section, is codified as 42 U.S.C. § 6901 et seq.

**U.S. Code.** The federal Resource Con-

#### CASE NOTES

**Cited:** Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

#### 8-7-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality or its successor;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality or its successor;

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that such hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air or discharged into any waters including groundwaters;

(5) "Facility" means any land and appurtenances thereon and thereto used for the treatment, storage, or disposal of hazardous waste;

(6) "Generation" means the act or process of producing waste materials;

(7) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may in the judgment of the department:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise improperly managed. Such wastes include, but are not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, or strong sensitizers or those which generate pressure through decomposition, heat, or other means;

(8) "Hazardous waste management" means the systematic control of the generation, collection, distribution, marketing, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;

(9) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport;

(10) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(11) "Site" means any real property located within the boundary of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous wastes;

(12)(A) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of hazardous wastes.

(B) Storage by means of burial shall be deemed to constitute disposal within the meaning of this subchapter;

(13) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;

(14) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or to render the waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume; and

(15) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

**History.** Acts 1979, No. 406, § 3; A.S.A. 1993, No. 994, § 2; 1997, No. 1219, § 9; 1947, § 82-4203; Acts 1989, No. 643, § 2; 1999, No. 1164, § 90.

## CASE NOTES

## ANALYSIS

Mathis, 310 Ark. 737, 839 S.W.2d 528 (1992).

Authority of Commission.  
Disposal.

**Authority of Commission.**

The legislature intended both the Solid and Hazardous Waste Act to allow the Arkansas Department of Pollution Control and Ecology (PC & E), within certain guidelines, to determine what substances are permitted under those acts, and a decision by PC & E permitting a category of waste not defined in any of the acts was not an abuse of discretion. *Bryant v.*

**Disposal.**

The phrase "at the time of disposal" contained in § 8-7-512(a)(3) and (4), taken in conjunction with the definition of disposal found in subdivision (4) of this section, should be construed to mean at the time the hazardous substances were discharged, deposited, injected, dumped, spilled, leaked, or placed any hazardous substances into or on any land or water. *Ark. Dep't of Env'tl. Quality v. Brighton Corp.*, 352 Ark. 396, 102 S.W.3d 458 (2003).

**8-7-204. Criminal, civil, and administrative penalties.**

## (a) CRIMINAL PENALTIES.

(1)(A) Any person who violates any provision of this subchapter, who commits any unlawful act under it, or who violates any rule, regulation, or order of the Arkansas Pollution Control and Ecology Commission or the Arkansas Department of Environmental Quality shall be guilty of a misdemeanor.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than twenty-five thousand dollars (\$25,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(2)(A) It shall be unlawful for a person to:

(i) Violate any provision of this subchapter, commit any unlawful act under it, or violate any rule, regulation, or order of the commission or the department, and leave the state or remove his or her person from the jurisdiction of this state; or

(ii) Purposely or knowingly make any false statement, representation, or certification in any document required to be maintained under this subchapter or falsify, tamper with, or render inaccurate any monitoring device, method, or record required to be maintained under this subchapter.

(B) A person who violates this subdivision (a)(2) shall be guilty of a felony. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than five (5) years or a fine of not more than fifty thousand dollars (\$50,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(3)(A) Any person who treats, stores, transports, or disposes of any hazardous wastes and purposely, knowingly, or recklessly causes the



release of hazardous wastes into the environment in a manner not otherwise permitted by law or creates a substantial likelihood of endangering human health, animal or plant life, or property shall be guilty of a felony.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than ten (10) years or a fine of not more than one hundred thousand dollars (\$100,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(4)(A) Any person who treats, stores, transports, or disposes of any hazardous waste and purposely, knowingly, or recklessly causes the release of hazardous wastes into the environment in a manner not otherwise permitted by law, thereby placing another person in imminent danger of death or serious bodily injury, shall be guilty of a felony.

(B) Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than twenty (20) years or a fine of not more than two hundred fifty thousand dollars (\$250,000), or subject to both such fine and imprisonment. For the purpose of fines only, each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(5) Notwithstanding the limits on fines set in subdivisions (a)(1)-(4) of this section, if a person convicted under any of subdivisions (a)(1)-(4) of this section has derived pecuniary gain from commission of the offenses, then he or she may be sentenced to pay a fine not to exceed two (2) times the amount of the pecuniary gain.

(b) CIVIL PENALTIES. The department may institute a civil action in any court of competent jurisdiction to accomplish any of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter and of any rules, regulations, orders, permits, or plans issued pursuant thereto;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed twenty-five thousand dollars (\$25,000) per day for violations of this subchapter and of any rules, regulations, permits, or plans issued pursuant to this subchapter; or

(5) Recover civil penalties assessed pursuant to subsection (c) of this section.

(c) Any person who violates any provision of this subchapter and regulations, rules, permits, or plans issued pursuant to this subchapter

may be assessed an administrative civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment. No civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing in accordance with regulations adopted by the commission. All hearings and appeals arising under this subchapter shall be conducted in accordance with the procedures prescribed by §§ 8-4-205, 8-4-212, and 8-4-218 — 8-4-229. The procedures of this subsection may also be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages.

(d) As an alternative to the limits on civil penalties set in subsections (b) and (c) of this section, if a person found liable in actions brought under subsection (b) or (c) of this section has derived pecuniary gain from commission of the offenses, then he or she may be ordered to pay a civil penalty equal to the amount of the pecuniary gain.

(e)(1) All moneys collected as reimbursement for expenses, costs, and damages to the department shall be deposited into the operating fund of the department.

(2) All moneys collected as civil penalties pursuant to this section shall be deposited into the Hazardous Substance Remedial Action Trust Fund as provided by § 8-7-509.

(3)(A) In his or her discretion, the Director of the Arkansas Department of Environmental Quality may authorize in-kind services as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(B) The violator may provide in-kind services or cash contributions as directed by the department by utilizing the violator's own expertise, by hiring and compensating subcontractors to perform the services, by arranging and providing financing for the services, or by other financial arrangements initiated by the department in which the violator and the department retain no monetary benefit, however remote.

(C) The services shall not duplicate or augment services already provided by the department through appropriations of the General Assembly.

(4) All moneys collected to cover the costs, expenses, or damages of other agencies or subdivisions of the state, including natural resource damages, shall be distributed to the appropriate governmental entity.

(f) The culpable mental states referenced throughout this section shall have the same definitions as set out in § 5-2-202.

(g) Solicitation or conspiracy, as defined by the Arkansas Criminal Code at § 5-3-301 et seq. and § 5-3-401 et seq., to commit any criminal act proscribed by this section and §§ 8-4-103 and 8-6-204 shall be punishable as follows:

(1) Any solicitation or conspiracy to commit an offense under this section which is a misdemeanor shall be a misdemeanor subject to fines



not to exceed fifteen thousand dollars (\$15,000) per day of violation or imprisonment for more than six (6) months, or both such fine and imprisonment;

(2) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of fifty thousand dollars (\$50,000) per day or imprisonment up to five (5) years shall be a felony subject to fines up to thirty-five thousand dollars (\$35,000) per day or imprisonment up to two (2) years, or both such fine and imprisonment;

(3) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of one hundred thousand dollars (\$100,000) per day or imprisonment up to ten (10) years shall be a felony subject to fines up to seventy-five thousand dollars (\$75,000) per day or imprisonment up to seven (7) years, or both such fine and imprisonment; and

(4) Any solicitation or conspiracy to commit an offense under this section which is a felony subject to fines of two hundred fifty thousand dollars (\$250,000) per day or imprisonment up to twenty (20) years shall be a felony subject to fines up to one hundred fifty thousand dollars (\$150,000) per day or imprisonment up to fifteen (15) years, or both such fine and imprisonment.

(h) In cases considering suspension of sentence or probation, efforts or commitments by the defendant to remediate any adverse environmental effects caused by his or her activities may be considered by the court to be restitution as contemplated by § 5-4-301.

(i) A business organization, its agents or officers, may be found liable under this section in accordance with the standards set forth in § 5-2-501 et seq. and sentenced to pay fines in accordance with the provisions of § 5-4-201(d) and (e).

(j) For the purposes of this subchapter, the court may assess against the State of Arkansas reasonable attorney's fees and other litigation costs reasonably incurred in any case under this subchapter in which the complainant has substantially prevailed in an action against the state for failure to comply with the Freedom of Information Act of 1967, § 25-19-101 et seq.

**History.** Acts 1979, No. 406, § 13; 1983, No. 456, § 1; A.S.A. 1947, § 82-4213; Acts 1989, No. 643, § 3; 1991, No. 435, § 1; 1991, No. 1057, §§ 2, 5; 1993, No. 731, § 2; 1995, No. 895, § 6; 2005, No. 1824, § 7.

**Publisher's Notes.** Acts 1991, No. 1057, § 1, provided: "The General Assembly finds and determines that the criminal and civil penalties imposed by current law do not accurately reflect the degree of concern which the state places upon its environmental resources. The current criminal penalties for hazardous waste and other violations are among the lowest in the nation. Civil penalties for violations

of the state water, air, solid waste and hazardous waste pollution control statutes are set at the minimum necessary to receive federally delegated programs. In declaring itself "The Natural State," the State of Arkansas demonstrated its commitment to its environmental resources. This commitment must be reflected in its environmental enforcement program. This act shall be liberally construed so as to achieve remedial intent."

Acts 1991, No. 1057, § 5, is also codified as §§ 8-4-103 (f)-(i) and 8-6-204 (g)-(j).

Acts 1993, No. 731, § 1 provided: "The state of Arkansas has an abundance of environmental concerns which need re-



search and study, as well as concerns which have an immediate remedy but are absent funds to facilitate their implementation. This amendment serves to clarify the existing use of in-kind services as

penalties, to include cash contributions for use in worthy environmental projects and to advance environmental interests."

**Cross References.** Arkansas Criminal Code, § 5-1-101 et seq.

### CASE NOTES

#### **Liability.**

Anyone who disposes of, transports, or treats hazardous waste in a manner likely to cause water or air pollution, is liable to the State for costs, expenses and damages,

including natural resource damages. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

**Cited:** United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

### **8-7-205. Unlawful actions.**

It shall be unlawful for any person to:

(1) Violate any provisions of this subchapter or of any rule, regulation, permit, or order adopted or issued under this subchapter;

(2) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subchapter or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any rules or regulations adopted pursuant thereto;

(3) Dispose of hazardous wastes at any disposal site or facility other than one for which a permit has been issued by the Arkansas Department of Environmental Quality pursuant to this subchapter;

(4) Store, collect, transport, treat, or dispose of any hazardous waste contrary to the rules, regulations, permits, or orders issued under this subchapter or in such a manner or place as to create or as is likely to be created a public nuisance or a public health hazard or to cause or is likely to cause water or air pollution within the meaning of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

**History.** Acts 1979, No. 406, § 12; A.S.A. 1947, § 82-4212.

### CASE NOTES

#### ANALYSIS

Escape of Dioxin.  
Liability.

#### **Escape of Dioxin.**

Where the record showed that dioxin was escaping from a plant site in quantities that under an acceptable, but unproved, theory could be considered as teratogenic, mutagenic, fetotoxic, and carcinogenic, there was a reasonable medical concern over the public health, and there-

fore the escape of dioxin into a creek and bayou from the plant site constituted an imminent and substantial endangerment to the health of persons and was subject to abatement. United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980), *aff'd*, 961 F.2d 796 (8th Cir. 1992).

#### **Liability.**

Anyone who disposes of, transports, or treats hazardous waste in a manner likely to cause water or air pollution, is liable to the State for costs, expenses and damages,

including natural resource damages. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

### **8-7-206. Private right of action.**

Any person adversely affected by a violation of this subchapter or of any rules, regulations, or orders issued pursuant thereto shall have a private right of action for relief against such violation.

**History.** Acts 1979, No. 406, § 15; A.S.A. 1947, § 82-4215.

### **8-7-207. Venue for legal proceedings.**

All legal proceedings affecting hazardous waste treatment or hazardous waste disposal facilities in this state shall be brought in the county in which the facility is located.

**History.** Acts 1979, No. 406, § 16; A.S.A. 1947, § 82-4216.

### **8-7-208. Official agency for program and agreements.**

(a) The Arkansas Department of Environmental Quality is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 and for the purpose of such other state or federal legislation as may be enacted to assist in the management of hazardous wastes.

(b)(1) The General Assembly of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes.

(2) The department may enter into agreements with the responsible authorities of the United States or of other states, subject to approval by the Governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of this subchapter and may carry out such agreements.

**History.** Acts 1979, No. 406, § 10; A.S.A. 1947, § 82-4210.

servation and Recovery Act of 1976, referred to in this section, is codified as 42 U.S.C. § 6901 et seq.

**U.S. Code.** The federal Resource Con-

### **8-7-209. Powers and duties of the department and commission generally.**

(a) The Arkansas Department of Environmental Quality shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations regarding hazardous waste management;

(2) To conduct and publish such studies of hazardous waste management in this state as shall be deemed appropriate, including, but not limited to:

(A) A description of the sources of hazardous waste generated within the state;

(B) Information regarding the types and quantities of such waste; and

(C) A description of current hazardous waste management practices and costs including treatment, recovery, and disposal;

(3) To develop, publish, and implement plans in accordance with the provisions of this subchapter for the safe and effective management of hazardous wastes within this state, including, but not limited to:

(A) The establishment of criteria for the identification of those locations within the state which are suitable for establishment of hazardous waste treatment or disposal facilities or sites; and

(B) Those locations which are not suitable for such purposes;

(4) To establish criteria for determination of whether any waste or combination of wastes is hazardous for purposes of this subchapter and to identify and specify wastes or combination of wastes as being hazardous;

(5) To issue, continue in effect, revoke, modify, or deny, under such conditions as it may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment, storage, or disposal facilities or sites, as more particularly prescribed by §§ 8-7-215 — 8-7-222;

(6) To make such investigations and inspections and to hold such hearings, after notice, as it may deem necessary or advisable for the discharge of its duties under this subchapter and to ensure compliance with this subchapter and any orders, rules, and regulations issued pursuant thereto;

(7) To make, issue, modify, revoke, and enforce orders, after notice and hearing, prohibiting violation of any of the provisions of this subchapter or of any rules and regulations issued pursuant thereto or any permit issued thereunder, and requiring the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter;

(8)(A) To institute proceedings in the name of the department in any court of competent jurisdiction to compel compliance with and to restrain any violation of the provisions of this subchapter or any rules, regulations, and orders issued pursuant thereto or any permit issued thereunder, and require the taking of such remedial measures as may be necessary or appropriate to implement or effectuate the provisions and purposes of this subchapter.

(B) In any civil action in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that



irreparable damage will occur should the requested relief not be granted, nor that the remedy at law is inadequate;

(9) To initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all state agency research programs pertaining to hazardous waste management, and establish technical advisory committees to assist in the development of procedures, standards, criteria, and rules and regulations, the members of which may be reimbursed for travel expenses in accordance with § 25-16-901 et seq.;

(10) To establish policies and standards for effective hazardous waste management;

(11) To establish standards and procedures for the certification of personnel to operate hazardous waste treatment or disposal facilities or any commercial hazardous waste management facilities; and

(12) In addition to the powers enumerated above, the department shall have and may use in the administration and enforcement of this subchapter all of the powers which it has under other laws administered by it, including the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., and the Arkansas Solid Waste Management Act, § 8-6-201 et seq.

(b) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To adopt, after notice and public hearing, and to promulgate, modify, repeal, and enforce rules and regulations regarding hazardous waste management as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter and the powers and duties of the department under it, including, but not limited to, rules and regulations for:

(A) The containerization and labeling of hazardous wastes, which rules, to the extent practicable, shall be consistent with those issued by the Department of Transportation, the United States Environmental Protection Agency, the State Highway Commission, and the Arkansas State Highway and Transportation Department;

(B) Establishing standards and procedures for the safe operation and maintenance of facilities;

(C) Identifying those wastes or combination of wastes which are incompatible and which may not be stored or disposed of together and procedures for preventing the storage, disposal, recovery, or treatment of incompatible wastes together;

(D) The reporting of hazardous waste management activities;

(E) Establishing standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites as required under § 8-7-219(3); and

(F) Establishing a manifest system for the transport of hazardous waste and prohibiting the receipt of hazardous waste at storage, processing, recovery, disposal, or transport facilities or sites without a properly completed manifest;

(2)(A) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or

change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(B) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(A) of this section.

(C) The extent of the analysis required under subdivision (b)(1)(A) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(B) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(D) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(3) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law which the commission deems necessary to secure public participation in environmental decision-making processes;

(4) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(5) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(6) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(7) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(8) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor; and

(9) Upon a majority vote, initiate review of any director's decision.

**History.** Acts 1979, No. 406, § 4; A.S.A. 1947, § 82-4204; Acts 1989, No. 643, § 4; 1997, No. 250, § 48; 1997, No. 1055, § 2; 1997, No. 1219, § 9.

**A.C.R.C. Notes.** Acts 1997, No. 1055, § 1, provided: "The purpose of this act is to bring the state law into coordination with the existing federal law. The program of permitting hazardous waste transporters initiated through the existing state law has for many years proven

an administrative burden on both the Department of Pollution Control and Ecology and on industry without providing any additional protection to the environment or public health. Therefore, this act will eliminate an unnecessary regulation while maintaining the integrity of the programs which provide the benefits of notice, monitoring, and enforcement."

Acts 1997, No. 1219, § 1, provided: "Legislative intent. With Act 1230 of 1991,

the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment."

Acts 1997, No. 1219, § 2, provided: "Arkansas Department of Pollution Control & Ecology' renamed to 'Arkansas Department of Environmental Quality'.

"(a) Effective March 31, 1999, the 'Arkansas Department of Pollution Control & Ecology' or 'Department,' as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and re-

sponsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

**Publisher's Notes.** The Arkansas Transportation Commission was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the State Highway and Transportation Department, respectively.

## CASE NOTES

**Cited:** United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

### 8-7-210. Existing rules, regulations, etc.

(a) All existing rules and regulations of the Arkansas Department of Environmental Quality not inconsistent with the provisions of this subchapter relating to subjects embraced within this subchapter shall remain in full force and effect until expressly repealed, amended, or superseded by the Arkansas Pollution Control and Ecology Commission, insofar as the rules and regulations do not conflict with the provisions of this subchapter.

(b) All orders entered, permits granted, and pending legal proceedings instituted by the department relating to subjects embraced within this subchapter shall remain unimpaired and in full force and effect until superseded by actions taken by the department or commission under this subchapter.

(c) No existing civil or criminal remedies, public or private, for any wrongful action shall be excluded or impaired by this subchapter.

(d) The provisions of this subchapter and the rules and regulations promulgated pursuant to it shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or the Arkansas Solid Waste Management Act,



§ 8-6-201 et seq., or any action taken by the department or commission under those laws.

**History.** Acts 1979, No. 406, § 15; A.S.A. 1947, § 82-4215.

### CASE NOTES

**Cited:** Bryant v. Mathis, 310 Ark. 737, 839 S.W.2d 528 (1992).

### 8-7-211. Variances, waivers, or extensions.

Where the application of or compliance with any rule or regulation issued under this subchapter, in the judgment of the Arkansas Pollution Control and Ecology Commission, would cause undue or unreasonable hardship to any person and not cause substantially adverse environmental effects, the commission may grant a variance, waiver, or extension to the same extent that such variance, waiver, or extension would be allowable under the federal Resource Conservation and Recovery Act of 1979, and the regulations promulgated thereunder. In no case shall the duration of any such variance exceed one (1) year. Renewals or extensions may be given only after opportunity for public comment on each such renewal or extension.

**History.** Acts 1979, No. 406, § 14; A.S.A. 1947, § 82-4214; Acts 1989, No. 643, § 5.

**U.S. Code.** The federal Resource Conservation and Recovery Act of 1979, re-

ferred to in this section, probably refers to the federal Resource Conservation and Recovery Act of 1976 which is codified as 42 U.S.C. § 6901 et seq.

### 8-7-212. Considerations in administration.

(a) In administering the provisions of this subchapter, the Arkansas Department of Environmental Quality may adopt and give appropriate effect to variations within this state in climate, geology, population density, and such other factors as may be relevant to the management of hazardous wastes, the establishment of standards and permit conditions, and to the siting of permitted facilities.

(b) To the extent practicable, the rules, regulations, and procedures adopted by the department pursuant to this subchapter shall be consistent with other environmentally related rules, regulations, and procedures of the department. In administering the provisions of this subchapter and of all other laws under the administration of the department, the department and the Arkansas Pollution Control and Ecology Commission shall coordinate and expedite the issuance of permits required by an applicant under one (1) or more laws, to the end of eliminating, insofar as practicable, any duplication of unnecessary time and expense to the applicant and the department.

(c) The department shall integrate all provisions of this subchapter with the appropriate provisions of all other laws which grant regulatory

authority to the department for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable.

**History.** Acts 1979, No. 406, § 6; A.S.A. 1947, § 82-4206.

### **8-7-213. Procedure generally.**

The procedure of the Arkansas Department of Environmental Quality and Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 et seq. and 8-4-201 et seq., including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 if they are not in conflict with the provisions set forth in this subchapter.

**History.** Acts 1979, No. 406, § 9; A.S.A. 1947, § 82-4209.

### **8-7-214. Emergency order for imminent hazard.**

(a)(1) Notwithstanding any other provisions of this subchapter, the Director of the Arkansas Department of Environmental Quality, upon finding that the storage, transportation, treatment, or disposal of any waste may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare, he or she may, without notice or hearing, issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(2) The order of the director may include, but is not limited to, directing the operator of the treatment or disposal facility or site or the custodian of the waste which constitutes the hazard to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard and, with respect to a facility or site, may order cessation of operation.

(b)(1) Any person to whom the order is directed shall comply with it immediately, but, on written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the Arkansas Pollution Control and Ecology Commission within ten (10) days after receipt of the written request.

(2) On the basis of the hearing, the commission shall continue the order in effect or shall revoke or modify it.

**History.** Acts 1979, No. 406, § 8; A.S.A. 1947, § 82-4208.

## CASE NOTES

**Cited:** United States v. Vertac Chem. Corp., 489 F. Supp. 870 (E.D. Ark. 1980).

**8-7-215. Permits — Requirement.**

(a) No person shall construct, substantially alter, or operate any hazardous waste treatment or disposal facility or site, nor shall any person store, treat, or dispose of any hazardous waste without first obtaining a permit from the Arkansas Department of Environmental Quality for the facility, site, or activity.

(b) Persons who construct, substantially alter, or operate a facility which generates hazardous wastes shall be subject to the reporting requirements of this subchapter but shall not be required to obtain a permit under this subchapter unless such person also stores, treats, or disposes of hazardous wastes.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1997, No. 1055, § 3.

**A.C.R.C. Notes.** Acts 1997, No. 1055, § 1, provided: "The purpose of this act is to bring the state law into coordination with the existing federal law. The program of permitting hazardous waste transporters initiated through the existing state law has for many years proven

an administrative burden on both the Department of Pollution Control and Ecology and on industry without providing any additional protection to the environment or public health. Therefore, this act will eliminate an unnecessary regulation while maintaining the integrity of the programs which provide the benefits of notice, monitoring, and enforcement."

**8-7-216. Permits — Issuance generally — Interim operations.**

(a) Permits shall be issued under such terms and conditions as the Arkansas Department of Environmental Quality may prescribe under the provisions of this subchapter and under such terms and conditions as the Arkansas State Highway and Transportation Department may prescribe for the transportation of hazardous wastes.

(b) Facilities required to have a permit under this subchapter or which are operating under the terms of permits issued under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or the Arkansas Solid Waste Management Act, § 8-6-201 et seq., as of March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter by the Arkansas Department of Environmental Quality, provided the owner or operator of such facility has made application on forms provided by the department for such permit by September 14, 1979.

(c)(1) Facilities required to have a permit under this subchapter due to statutory or regulatory changes which occur after March 14, 1979, may continue in operation until such time as a permit is issued under this subchapter, provided that the owner or operator notifies the Arkansas Department of Environmental Quality of newly regulated activities at the facility within ninety (90) days of the effective date of each statutory or regulatory change and makes initial permit application within one hundred eighty (180) days of the effective date of such



changes on forms provided by the Arkansas Department of Environmental Quality.

(2) This subsection shall not apply to any facility at which interim operating authority or a final permit has previously been terminated or denied.

(d) Interim operating authority acquired pursuant to subsection (b) of this section shall terminate for incineration facilities on November 8, 1989, unless the owner or operator applied for final permit determination by November 8, 1986.

(e) Interim operating authority acquired pursuant to subsection (b) of this section shall terminate for storage and treatment facilities on November 8, 1992, unless the owner or operator applied for final permit determination by November 8, 1988.

(f) Interim operating authority acquired pursuant to subsection (c) of this section for land disposal facilities shall terminate twelve (12) months after the facility first becomes subject to permitting unless the owner or operator certifies compliance with all applicable groundwater monitoring and financial responsibility requirements.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 6; 1991, No. 489, § 1; 1991, No. 786, § 8; 1999, No. 340, § 2.

**Publisher's Notes.** Acts 1999, No. 340, § 1, provides: "Legislative intent. In drafting Act 643 of 1989, the General Assembly sought to allow for existing and newly-regulated hazardous waste management facilities to benefit from continued operation under interim status while their application for a treatment, storage, or disposal permit is being reviewed and

processed for approval in exactly the same manner as provided for by the federal laws and regulations for these activities. As enacted, the language at § 8-7-216(d) and (e) would deny interim status to newly-regulated treatment, storage, and disposal facilities, a much more stringent requirement than envisioned in Act 643. The purpose of this Act is to achieve the legislative intent of Act 643 of 1989 and to restore equivalency of the state requirements with those of the federal government."

## 8-7-217. Permits — Notice of hearing.

No permit shall be issued by the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission for any commercial hazardous waste treatment, storage, or disposal facility unless thirty (30) days' advance notice of a hearing has been placed in the largest newspaper published in the county in which a facility or facilities are located or proposed to be located, as well as published in the largest newspaper published in the adjoining counties. If there is no newspaper published in any of the counties so affected, the notice shall be published in the newspaper having the largest circulation in the county.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

**8-7-218. Permits — Compliance with subchapter, state and federal standards, regulations, etc.**

(a) No permits shall be issued by the Arkansas Department of Environmental Quality for any facility unless the department, after opportunity for public comment, has determined that the facility has been designed and will be operated in such manner that any emission from the facility will comply with the provisions of this subchapter and all applicable state and federal standards and regulations concerning air and water quality and that the transfer, handling, and storage of materials within the facility will not cause conditions which would violate state and federal standards concerning worker safety or create unreasonable hazards to the environment or to the health and welfare of the people living and working in or near the facility.

(b)(1) No permit shall be issued by the department for any commercial disposal or storage facility off the site where the hazardous waste is generated until the department has adopted rules, regulations, standards, and procedures pursuant to § 8-7-209.

(2) The rules, regulations, standards, procedures, or other requirements adopted and imposed by the department shall not be less stringent than the regulations promulgated or revised by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act of 1976.

(c) No permit shall be issued for hazardous waste treatment, storage, or disposal facilities except under the terms of regulations of the department which conform to the provisions of § 3005 of the federal Resource Conservation and Recovery Act.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 7; 1999, No. 1164, § 91.

**U.S. Code.** The federal Resource Conservation and Recovery Act of 1976, referred to in this section, is codified as 42 U.S.C. § 6901 et seq.

Section 3005 of the federal Resource Conservation and Recovery Act, referred to in this section, is codified as 42 U.S.C. § 6925.

**8-7-219. Permits — Commercial facilities — Terms and conditions.**

No permit shall be issued for any commercial hazardous waste treatment, storage, or disposal facility unless that facility meets such terms and conditions as the Arkansas Department of Environmental Quality may direct, including, but not limited to:

(1) Evidence of liability insurance in such amount as the department may determine to be necessary for the protection of the public health and safety and the protection of the environment;

(2) Evidence of financial responsibility in such form and amount as the department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility,

all appropriate measures are taken to prevent present and future damage to the public health and safety and to the environment;

(3)(A) Evidence that the personnel employed at the hazardous waste treatment or disposal facility meet such qualifications as to education and training as the department may determine to be necessary to assure the safe and adequate operation of the facility.

(B) Persons charged with the direct supervision of the operation of any facility must be certified by the department as having such qualifications after a review of the types, properties, and volume of hazardous waste to be treated or disposed of at the facility.

(C) The department may require the recertification of supervisory personnel where there is any significant change in the types or properties of hazardous waste being treated or disposed of in any facility;

(4) Evidence of an appropriate preventive maintenance program, spill prevention plan, safety procedures, and contingency plans which have been developed in consultation with the fire department having jurisdiction and by the mayor or city manager of the municipality or by the county judge of the county in which the facility is to be located;

(5) Evidence that the location of the facility is consistent with the siting criteria established by the department as provided in § 8-7-209(a)(3). The provisions of this subdivision shall not apply to treatment facilities which began operation prior to the date of enactment of this act and which have an existing operating permit from the department, or to any subsequent modifications to such facilities, provided that the owner of the facility can demonstrate that the modifications do not materially increase the degree of hazards associated with the facility; and

(6) Evidence of such forms of assurance, including full fee ownership of lands, and all mineral rights thereto, to ensure that the owner of any hazardous waste landfill has the legal authority to commit the landfill to perpetual security.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

Acts 1979, No. 406, was signed by the Governor and became effective on March 14, 1979.

**Publisher's Notes.** In reference to the term "the date of enactment of this act,"

## **8-7-220. Permits — Duration — Renewal.**

(a) Permits shall be issued for a period not to exceed ten (10) years. However, land disposal permits shall be reviewed five (5) years from the date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable laws and regulations.

(b) Permits shall be subject to renewal by the Arkansas Department of Environmental Quality upon a showing that the facility has been operated in accordance with the terms of the permit, the rules and



regulations applicable to such facility, and in compliance with all other provisions of this subchapter.

(c) Nothing in this section shall preclude a permit from being reviewed and modified at any time during its term.

**History.** Acts 1979, No. 406, § 5; 1985, No. 920, § 1; A.S.A. 1947, § 82-4205; Acts 1999, No. 1164, § 92.

#### **8-7-221. Permits — Revocation.**

Any permit issued under §§ 8-7-215 — 8-7-220 shall be subject to revocation for failure of the permittee to comply with the terms and conditions of the permit, the rules and regulations of the Arkansas Department of Environmental Quality applicable thereto, or the provisions of this subchapter.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

#### **8-7-222. Permits — Hearing upon denial, revocation, or modification.**

Any person who is denied a permit by the Director of the Arkansas Department of Environmental Quality or who has such permit revoked or modified shall be afforded an opportunity for a hearing by the Arkansas Pollution Control and Ecology Commission in connection therewith upon written application made within thirty (30) days after service of notice of the denial, revocation, or modification.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

#### **8-7-223. Location of landfill.**

No hazardous waste landfill disposal facility off the site of generation shall be located within one-half (½) mile of any occupied dwelling unless the applicant shall affirmatively demonstrate and the Arkansas Department of Environmental Quality shall specifically find that, because of the nature and amounts of the materials to be placed in such facility, a lesser distance will provide adequate margins of safety even under abnormal operating conditions.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205.

#### **8-7-224. Rules for transporting hazardous waste.**

(a) Following notice and public hearing, the Arkansas State Highway and Transportation Department, in consultation with the Arkansas Department of Environmental Quality, shall issue rules and regulations for the transportation of hazardous wastes. The rules and regu-

lations shall be consistent with applicable rules and regulations issued by the United States Department of Transportation and with any rules, regulations, and standards issued by the Arkansas Department of Environmental Quality pursuant to this subchapter.

(b) The provisions of this section shall apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves, or combinations thereof.

**History.** Acts 1979, No. 406, § 7; A.S.A. 1947, § 82-4207.

### **8-7-225. Records and examinations.**

(a) The owner or operator of any hazardous waste management facility or site shall notify the Arkansas Department of Environmental Quality as to hazardous waste management activities in accordance with the requirements of this subchapter and regulations, permits, and orders issued under this subchapter, and shall establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment or methods, take such samples, perform such tests, and provide such other information to the department as the Director of the Arkansas Department of Environmental Quality may reasonably require.

(b) The department or any authorized employee or agent thereof may examine and copy any books, papers, records, or memoranda pertaining to the operation of the facility or site.

(c) The department or any authorized employee or agent thereof may enter upon any public or private property for the purpose of obtaining information or conducting surveys or investigations necessary or appropriate for the purposes of this subchapter.

(d)(1)(A) Any records, reports, or information obtained under this subchapter and any permits, permit applications, and related documentation shall be available to the public for inspection and copying.

(B) Upon a showing satisfactory to the director that the records, reports, permits, documentation, information, or any part thereof would, if made public, divulge methods or processes entitled to protection as trade secrets, the director shall consider, treat, and protect the records, reports, or information as confidential.

(2)(A) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(B) The provisions of subdivision (d)(2)(A) shall not be construed to limit the department's authority to release confidential information during emergency situations.

(3) Any violation of this subsection shall be unlawful and constitute a misdemeanor.

**History.** Acts 1979, No. 406, § 11; 1983, No. 809, § 1; A.S.A. 1947, § 82-4211; Acts 1989, No. 643, § 8.

### 8-7-226. Fees — Fund established.

(a) The Arkansas Pollution Control and Ecology Commission shall have authority to establish by regulation a schedule of fees to recover the costs of processing permit applications and permit renewal proceedings, on-site inspections and monitoring, the certification of personnel to operate hazardous waste treatment, storage, or disposal facilities, and other activities of Arkansas Department of Environmental Quality personnel which are reasonably necessary to assure that generators and transporters of hazardous waste and hazardous waste management facilities are complying with the provisions of this subchapter and which reasonably should be borne by the transporter, generator, or owner or operator of the hazardous waste management facility.

(b) All fees collected pursuant to this section shall be dedicated to enabling the department to receive authorization to administer a hazardous waste management program in Arkansas pursuant to the federal Resource Conservation and Recovery Act of 1979 as amended by the Hazardous and Solid Waste Amendments of 1984.

(c) The Hazardous Waste Permit Fund is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. All fees collected under the provisions of this section shall be deposited in this fund.

(d) The commission is hereby authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe such fees, rates, tolls, or charges for the services delivered by the department or its successor in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

**History.** Acts 1979, No. 406, § 5; A.S.A. 1947, § 82-4205; Acts 1989, No. 643, § 9; 1991, No. 1235, § 1; 1993, No. 1254, §§ 3, 5; 1997, No. 1219, § 9; 1999, No. 1164, § 93.

**Publisher's Notes.** Acts 1993, No. 1254, § 5, codified as subsection (d) of this section, is also codified as §§ 8-1-103(5), 8-1-105(c), and 8-9-404(g).

**U.S. Code.** The federal Resource Conservation and Recovery Act of 1979, referred to in this section, probably refers to

the federal Resource Conservation and Recovery Act of 1976 which is codified as 42 U.S.C. § 6901 et seq.

The Hazardous and Solid Waste Amendments of 1984, referred to in this section, are codified as 42 U.S.C. §§ 6901, 6902, 6905, 6912, 6915-6917, 6921-6931, 6933, 6935-6939, 6939a, 6941, 6943-6945, 6948, 6949a, 6956, 6962, 6972, 6973, 6976, 6979a, 6979b, 6982, 6984, 6991, and 6991a-6991i.



**8-7-227. Corrective action at permitted facilities and interim status facilities.**

(a)(1) Any permit issued under this subchapter for any hazardous waste treatment, storage, or disposal facility shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at the treatment, storage, or disposal facility seeking the permit under this subchapter regardless of the time at which waste was placed in the unit.

(2) The corrective action component of the permit shall contain:

(A) Schedules of compliance for the corrective action when the corrective action cannot be completed prior to issuance of the permit; and

(B) Assurances of financial responsibility for completing the corrective action.

(3) The corrective action component of the permit shall also require that corrective action be taken beyond the facility boundary when necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Director of the Arkansas Department of Environmental Quality that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action.

(b)(1) Whenever the director determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under interim operating authority pursuant to this subchapter, the director may:

(A) Issue an order requiring corrective action or such other response measure as the director deems necessary to protect human health or the environment; or

(B) Commence a civil action in the circuit court in the county in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2)(A) Any order issued under this subsection:

(i) Shall state with reasonable specificity the nature of the required corrective action or other response measure;

(ii) Shall specify a time for compliance; and

(iii) May include a suspension or revocation of the interim authority to operate under this subchapter.

(B) If any person named in an order issued under this section fails to comply with the order, the director may assess a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day of noncompliance with the order.

**History.** Acts 2005, No. 1166, § 1.

**SUBCHAPTER 3 — RESOURCE RECLAMATION ACT****SECTION.**

8-7-301. Title.

8-7-302. Legislative findings.

8-7-303. Policy and purpose.

8-7-304. Definitions.

8-7-305. Exception to provisions.

**SECTION.**

8-7-306. Penalties.

8-7-307. Unlawful actions — Acts or omissions of third parties.

8-7-308. Powers and duties generally.

8-7-309. Appeals.

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**Effective Dates.** Acts 1985, No. 922, § 7: Apr. 15, 1985. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that inequalities now exist in the regulation of hazardous waste management in this state as a result of current provisions of Act 1098 of 1979 (§ 8-7-301 et seq.), and that said provisions jeopardize the federal delegation of authority necessary to operate a state hazardous waste management

program in lieu of a federal program, thereby threatening the orderly development of the state's resources in a manner which will protect the health and welfare of the people of the State of Arkansas. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public health, safety and welfare, shall take effect and be in force from the date of its approval."

**RESEARCH REFERENCES**

**Ark. L. Notes.** Looney, Handling Administrative Proceedings Before the Arkansas Pollution Control and Ecology De-

partment and Commission, 1988 Ark. L. Notes 23.

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**8-7-301. Title.**

This subchapter may be cited as the "Arkansas Resource Reclamation Act of 1979".

**History.** Acts 1979, No. 1098, § 1; A.S.A. 1947, § 82-4217.

**8-7-302. Legislative findings.**

The General Assembly of this state finds and it is declared that:

(1) The disposal of hazardous wastes, although currently necessary for certain forms of hazardous wastes, represents an inefficient use of natural resources and may present long-term threats to the environment and to the public health and safety;

(2) Technically and economically feasible treatment methods are becoming increasingly available and offer the advantages of complete destruction of these wastes or the recovery and reclamation of some, if not all, constituents of these wastes;

(3) In addition to the recovery or reclamation of natural resources, treatment of hazardous wastes reduces the volume of hazardous wastes which must be disposed of and thereby reduces the associated threats to the environment and to the public health and safety;

(4) Interstate cooperation is necessary to assure that the volume of hazardous wastes which must be disposed of within the state is reduced through a comprehensive program which encourages and, where appropriate, requires the treatment of hazardous wastes; and

(5) The Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., authorizes the Arkansas Department of Environmental Quality to encourage the development of interstate agreements for the management of hazardous wastes and to enter into such agreements, with the concurrence of the Governor.

**History.** Acts 1979, No. 1098, § 2; A.S.A. 1947, § 82-4218.

### **8-7-303. Policy and purpose.**

The General Assembly declares that it is the policy of this state and the purpose of this subchapter to:

(1) Establish a statewide program designed to protect society and the environment from the risks and burdens associated with the continued practice of disposing of those forms of hazardous wastes which could otherwise be treated;

(2) Encourage the development and utilization of techniques which result in the recovery, reclamation, and conservation of resources of the state, including the reclamation and conservation or safeguarding of abandoned hazardous waste disposal sites;

(3) Encourage interstate cooperation and interstate agreements which would provide a requisite balance of disposal and treatment facilities among the states and which would reduce the amount of hazardous wastes disposed of in the state, irrespective of the origin of these wastes; and

(4) Coordinate the administration of this subchapter with the administration of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq. so as to further the purposes of both this subchapter and Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

**History.** Acts 1979, No. 1098, § 3; 1985, No. 922, § 1; A.S.A. 1947, § 82-4219.

### **8-7-304. Definitions.**

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission within the Arkansas Department of Environmental Quality;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;



(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water in whatever manner so that the hazardous waste or any constituent thereof might or might not enter the environment or be emitted into the air or discharged into any water, including groundwaters;

(5) "Facility" means any land and appurtenances thereon and thereto used for the treatment, storage, or disposal of hazardous waste;

(6) "Generation" means the act or process of producing waste materials;

(7)(A) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may, in the judgment of the department:

(i) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise improperly managed.

(B) Such wastes include, but are not limited to, those which are radioactive, toxic, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means;

(8) "Hazardous waste management" means the systematic control of the generation, collection, source separation, storage, transportation, processing, recovery, disposal, and treatment of hazardous waste;

(9) "Manifest" means the form used for identifying the quantity and composition and the origin, routing, and destination of hazardous waste during its transport;

(10) "Owners, operators, or other responsible parties" means and includes:

(A) Any person owning or operating a site or facility; or

(B) In the case of any inactive or abandoned facility or site, any person who owned, operated, or otherwise controlled the activities at the site or facility during the time that the site or facility was used to manage hazardous wastes;

(11) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(12) "Site" means any real property located within the boundaries of the State of Arkansas contemplated or later acquired for the purpose of, but not limited to, landfills or other facilities to be used for treatment, storage, disposal, or generation of hazardous wastes;

(13)(A) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes.

(B) However, storage by means of burial shall be deemed to constitute disposal within the meaning of this subchapter;

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal;

(15) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste less hazardous, safer for transport, amenable to recovery, amenable to storage, amenable to disposal, or reduced in volume; and

(16) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated.

**History.** Acts 1979, No. 1098, § 4; 1985, No. 922, § 2; A.S.A. 1947, § 82-4220; Acts 1999, No. 1164, § 94.

### **8-7-305. Exception to provisions.**

This subchapter does not apply to an industrial waste treatment facility that discharges into a publicly owned treatment works if the industrial waste treatment facility and publicly owned treatment works comply with the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

**History.** Acts 1979, No. 1098, § 8; A.S.A. 1947, § 82-4224.

### **8-7-306. Penalties.**

(a) Any person who commits any unlawful act under this subchapter shall be guilty of a misdemeanor and upon conviction shall be subject to criminal penalties consisting of imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000), or by both such fine and imprisonment. Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this subchapter or the regulations issued pursuant to this subchapter or who violates any condition of a permit issued under this subchapter may, pursuant to administrative procedures and civil penalty regulations of the Arkansas Pollution Control and Ecology Commission, be assessed a civil penalty by the commission. The penalty shall not exceed twenty-five thousand dollars (\$25,000) for each violation. Each day of a continuing violation may be deemed as a separate violation for purposes of penalty assessments. However, no civil penalty may be assessed until the person charged with the violation has been given the opportunity for a hearing on such violation pursuant to §§ 8-4-218, 8-4-219, and 8-4-221.

**History.** Acts 1979, No. 1098, § 7; 1985, No. 922, § 5; A.S.A. 1947, § 82-4223.

### **8-7-307. Unlawful actions — Acts or omissions of third parties.**

(a) It shall be unlawful for any person:

(1) To violate any provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter;

(2) To transport hazardous wastes into or out of the state, except as provided by regulations established by the Arkansas Department of Environmental Quality pursuant to the provisions of this subchapter; and

(3) To dispose of hazardous wastes in the state except as provided by regulations established by the department pursuant to this subchapter.

(b) No person shall be liable for any violation of any provision of this subchapter or of any rule, regulation, permit, or order issued under this subchapter which was caused solely by the acts or omissions of a third party.

**History.** Acts 1979, No. 1098, § 6; 1985, No. 922, § 4; A.S.A. 1947, § 82-4222; Acts 1989, No. 260, § 6.

### **RESEARCH REFERENCES**

**U. Ark. Little Rock L.J.** Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

### **8-7-308. Powers and duties generally.**

The Arkansas Department of Environmental Quality shall have the following powers and duties:

(1) To enter into such agreements or compacts between one (1) or more states or with the federal government as may be necessary and appropriate to effectuate a program consistent with the purposes of this subchapter if these agreements or compacts first receive the approval of the Governor;

(2) To adopt such regulations as may be necessary and appropriate to enforce within the state the terms of any interstate agreement or compact developed pursuant to the provisions of this subchapter;

(3) To promote the purposes of this subchapter and to effectuate and implement interstate agreements by imposing reasonable conditions on permits issued under this subchapter and the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq. and the regulations promulgated under this subchapter and those sections;

(4) To prohibit, by regulation or by condition of permit, the disposal of any hazardous wastes within the state unless the owner or custodian of the wastes can demonstrate to the reasonable satisfaction of the



director that it is technically or economically infeasible for the wastes to be treated;

(5) To issue, continue in effect, revoke, modify, or deny, under such terms as it or the General Assembly may prescribe, permits for the establishment, construction, operation, or maintenance of hazardous waste treatment or disposal facilities;

(6) To adopt and enforce regulations which would require the owners, operators, or other responsible parties of inactive or abandoned disposal sites to undertake such actions as are reasonable to prevent environmental contamination;

(7) To receive federal and private funds for the purpose of securing or reclaiming abandoned hazardous waste disposal sites in an environmentally safe manner; and

(8) To encourage and to participate in studies, projects, and agreements for the purpose of identifying and evaluating improvements in hazardous waste treatment and disposal techniques.

**History.** Acts 1979, No. 1098, § 5; 1985, No. 922, § 3; A.S.A. 1947, § 82-4221.

## 8-7-309. Appeals.

Appeal of the Arkansas Pollution Control and Ecology Commission's decision may be taken in accordance with the appellate procedure specified in §§ 8-4-222 — 8-4-229.

**History.** Acts 1979, No. 1098, § 7; 1985, No. 922, § 5; A.S.A. 1947, § 82-4223.

## SUBCHAPTER 4 — EMERGENCY RESPONSE FUND ACT

### SECTION.

8-7-401 — 8-7-421. [Repealed.]

## 8-7-401 — 8-7-421. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 2005, No. 1824, § 4. This subchapter was derived from the following sources:

8-7-401. Acts 1985, No. 452, § 1; A.S.A. 1947, § 82-4701.

8-7-402. Acts 1985, No. 452, § 2; A.S.A. 1947, § 82-4702.

8-7-403. Acts 1985, No. 452, §§ 3, 7; A.S.A. 1947, §§ 82-4703, 82-4707; Acts 1989, No. 260, § 5; 1999, No. 1164, §§ 95, 96.

8-7-404. Acts 1985, No. 452, § 11; A.S.A. 1947, § 82-4711.

8-7-405. Acts 1985, No. 452, § 10; A.S.A. 1947, § 82-4710.

8-7-406. Acts 1985, No. 452, § 9; A.S.A. 1947, § 82-4709.

8-7-407. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-408. Acts 1985, No. 452, § 5; A.S.A. 1947, § 82-4705; Acts 1987, No. 761, § 1.

8-7-409. Acts 1985, No. 452, § 5; A.S.A. 1947, § 82-4705; Acts 1989, No. 260, § 3.

8-7-410. Acts 1985, No. 452, § 4; A.S.A. 1947, § 82-4704; Acts 1997, No. 309, § 3; 1999, No. 140, § 1.

8-7-411. Acts 1985, No. 452, §§ 2, 5;

A.S.A. 1947, §§ 82-4702, 82-4705; Acts 1995, No. 114, § 1.

8-7-412. Acts 1985, No. 452, § 6; A.S.A. 1947, § 82-4706.

8-7-413. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-414. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-415. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707; Acts 1991, No. 516, § 2; 1999, No. 1164, § 97.

8-7-416. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-417. Acts 1985, No. 452, § 8; A.S.A. 1947, § 82-4708; Acts 1988 (3rd Ex. Sess.), No. 15, § 1.

8-7-418. Acts 1985, No. 452, § 7; A.S.A. 1947, § 82-4707.

8-7-419. Acts 1985, No. 452, § 9; A.S.A. 1947, § 82-4709.

8-7-420. Acts 1987, No. 761, § 2.

8-7-421. Acts 2001, No. 449, § 1.

## SUBCHAPTER 5 — REMEDIAL ACTION TRUST FUND ACT

### SECTION.

8-7-501. Title.

8-7-502. Legislative intent — Purposes.

8-7-503. Definitions.

8-7-504. Penalties.

8-7-505. Unlawful acts.

8-7-506. Regulations — Administrative procedure.

8-7-507. Compliance of federal and state entities.

8-7-508. Remedial and removal authority of the department.

8-7-509. Hazardous Substance Remedial Action Trust Fund.

8-7-510. Federal actions or compensation not to be duplicated.

8-7-511. Furnishing of information.

8-7-512. Liability for costs.

8-7-513. Apportionment of costs.

### SECTION.

8-7-514. Recovery of expenditures generally.

8-7-515. Recovery of expenditures — Limitations.

8-7-516. Liens for expenditures and value of improvements.

8-7-517. Punitive damages.

8-7-518. Fees on the generation of hazardous waste.

8-7-519. Appeals.

8-7-520. Contribution.

8-7-521. Site access for remedial or removal action.

8-7-522. Liability for actions relating to remedial actions.

8-7-523. [Repealed.]

8-7-524. Recycling transactions.

8-7-525. Appropriation.

**Cross References.** Emergency services, § 12-75-101 et seq.

**Effective Dates.** Acts 1985, No. 479, § 16: Mar. 21, 1985. Emergency clause provided: "It has been found, and is declared by the General Assembly of Arkansas, that a great need exists to provide funding for state government response to release of hazardous substances into the environment of the state that threaten the public health and welfare. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1987, No. 380, § 3: Apr. 23, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the annual fees currently assessed persons who generate hazardous waste in the State or accept hazardous

wastes generated outside the State for treatment, storage or disposal in the State are based on weight alone; that a fee based on weight alone does not take into consideration many factors which should be given consideration in determining fair and equitable fees for generating or accepting hazardous wastes in the State for disposal, treatment or storage; that this Act is designed to authorize the Pollution Control and Ecology Commission to set such fees, within a prescribed maximum based on all relevant factors and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1988 (3rd Ex. Sess.), No. 15, § 4: Feb. 9, 1988. Emergency clause provided: "It is hereby found and determined by the

General Assembly that FHLMC (Freddie Mac) has indicated that loans in Arkansas may be jeopardized due to lien provisions contained in the Emergency Response Fund Act; that this matter needs immediate clarification in order to insure that monies are available to the people of Arkansas for economic development. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 441, § 6: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are numerous hazardous substance sites in this state which pose a threat to the public health, welfare and safety of the citizens of this state and to the environment. In order to promptly address these sites it is imperative that this act be adopted to encourage maximum participation from the private sector. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1041, § 7: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the laws of this state concerning the assessment of fees for the generation of hazardous waste which is managed in a totally enclosed treatment facility, an elementary neutralization unit, or a wastewater treatment unit are inequitable in that not all such management activities are assessed and the methodology of calculating the volume of waste generated is not uniform. Further, the fees are duplicative of fees assessed by the Water Division for the same activities when an NPDES or UIC Permit has been issued to authorize disposal of such wastes after treatment. Further, the assessment of such fees for activities such as the management in a totally enclosed treatment facility, an elementary neutralization unit, or a wastewater treatment unit can have the effect of discouraging the type of management activities that are proper and acceptable for such wastes. Further, the department will be issuing statements for hazardous waste genera-

tion activities in March of 1999 for 1998 hazardous waste activities, and this bill is necessary to avoid the assessment of unnecessary fees for 1998 hazardous waste activities and avoid disruption of the hazardous waste management program. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Act 2005, No. 1824, § 20: July 1, 2005. Emergency clause provided: "The General Assembly of the State of Arkansas hereby finds and determines that the decision of the Arkansas Supreme Court in *Arkansas Department of Environmental Quality v. Brighton Corp.* 352 Ark. 396, 102 S.W.3d 458 (2003), has raised questions regarding the factual proof required to establish a claim for cost recovery under the Arkansas Remedial Action Trust Fund Act and regarding the retroactivity of the statute. The General Assembly further finds and determines that the doubts raised by the decision in the Brighton case have created substantial uncertainty regarding the enforcement authority of the Arkansas Department of Environmental Quality and the rights and responsibilities of private parties under the Arkansas Remedial Action Trust Fund Act, all of which require urgent resolution. Therefore, an emergency is declared to exist; and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005, and shall apply retroactively."

Acts 2011, No. 1011, § 8: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lead and lead-based paint have been determined to be a human health concern posing an immediate danger to children, families, and the environment; and that this act is immediately necessary to prevent irreparable harm to children in this state. Therefore, an emergency is declared to exist, and this act being necessary for the



preservation of the public peace, health, and safety shall become effective on July 1, 2011.”

### RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

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#### 8-7-501. Title.

This subchapter may be known and may be cited as the “Remedial Action Trust Fund Act”.

**History.** Acts 1985, No. 479, § 1; A.S.A. 1947, § 82-4712.

### CASE NOTES

**Cited:** Grisham v. Commercial Union Ins. Co., 927 F.2d 1039 (8th Cir. 1991).

#### 8-7-502. Legislative intent — Purposes.

(a) It is the intent of the General Assembly to provide the state with the necessary authority and funds to investigate, control, prevent, abate, treat, or contain releases of hazardous substances necessary to protect the public health and the environment, including funds required to assure payment of the state’s participation in response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to encourage the reduction of hazardous waste generation.

(b) The purpose of this subchapter is to encourage privately funded remedial action and to clarify that persons who have undertaken remedial action at a hazardous substance site in response to an action initiated by the Arkansas Department of Environmental Quality pursuant to § 8-7-508 may obtain contribution from any other person who is liable for remediation of the hazardous substance site.

(c) A further purpose of this subchapter is to clarify the General Assembly’s intent to provide the department with the necessary funds for remedial action at a hazardous substance site, recognizing that both public and private funds must be expended to implement remedial action at the hazardous substance sites which exist in this state. Costs and expenses for remedial action, whether expended by the department or by any person liable for the hazardous substance site are legal damages to persons liable to the state and to persons liable to any other person for contribution, whether the liability arises by voluntary compliance with this subchapter pursuant to an order from or settlement with the department, or by suit for injunctive relief, declaratory

judgment, contribution, damages, or restitution, and whether the suit is brought by the state or by any party authorized to bring a suit for relief under this subchapter.

(d) The General Assembly expressly intends that the provisions of this subchapter shall apply retroactively.

(e) A further purpose of this act is to:

(1) Provide the state with the authority necessary to protect the public's health and safety and the environment from releases or threatened releases of hazardous substances; and

(2) Provide emergency response capabilities necessary to promptly contain, control, or remove hazardous substances resulting from spills or accidental releases.

**History.** Acts 1985, No. 479, § 2; A.S.A. 1947, § 82-4713; Acts 1989, No. 441, § 1; 2005, No. 1824, § 2.

**Meaning of "this act".** Acts 2005, No. 1824, codified as §§ 8-7-502, 8-7-512, 8-4-103, 8-6-204, 8-7-503, 8-7-508, 8-7-509, 8-7-514 — 8-7-517, 8-7-519, 8-7-521, 8-7-525, and 20-27-1002.

**U.S. Code.** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this section, is codified primarily as 42 U.S.C. § 9601 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Julian & Schlumberger, Insurance Coverage for Environmental Clean-Up Costs Under

Comprehensive General Liability Policies, 19 U. Ark. Little Rock L.J. 57.

## CASE NOTES

### ANALYSIS

In General.  
Air or Water Pollution.  
Causes of Action.

#### In General.

This subchapter was enacted by the General Assembly in 1985 to provide the state, through its environmental agencies, with the necessary authority and funds to investigate, control, prevent, abate, treat, or contain releases of hazardous substances, and, among other things, to disburse funds required to assure payment of the state's participation in response to environmental actions taken by the federal government, specifically pursuant to the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

This subchapter is an extension of the Federal Comprehensive Environmental

Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

The Remedial Action Trust Fund was created by the General Assembly to meet the ten percent state contribution required by Congress before the Superfund monies could be expended to clean up a hazardous waste site under 42 U.S.C. § 9604(c). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

#### Air or Water Pollution.

There is no reference in this subchapter to air or water pollution as that term is defined in Chapter 4 of this title, and thus no explicit legislative intent that damage to the state's natural resources be covered under this subchapter. *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

#### Causes of Action.

This subchapter is primarily designed to obtain costs and expenses for remedial

action at hazardous substances sites, and does not provide a cause of action for natural resource damages. Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

**Cited:** Arkansas ex rel. Bryant v. Dow Chem. Co., 981 F. Supp. 1170 (E.D. Ark. 1997).

### 8-7-503. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510;

(5) "Fund" means the Hazardous Substance Remedial Action Trust Fund created by this subchapter;

(6) "Hazardous substance" means:

(A) As of March 21, 1985, any:

(i) Substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act, Pub. L. No. 92-500;

(ii) Element, compound, mixture, solution, or substance designated pursuant to § 102 of Title I of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510;

(iii) Hazardous waste, including polychlorinated biphenyls, as defined by the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the regulations promulgated thereunder;

(iv) Toxic pollutant listed under § 307(a) of the Federal Water Pollution Control Act;

(v) Hazardous air pollutant listed under § 112 of the federal Clean Air Act; and

(vi) Hazardous chemical substance or mixture regulated under § 7 of the federal Toxic Substances Control Act; and

(B) Any other substance or pollutant designated by regulations of the commission promulgated under this subchapter;

(7) "Hazardous substance sites" means any sites or facilities where hazardous substances have been disposed of or from which there is a release or threatened release of hazardous substances;

(8) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, or any other legal entity, however organized;

(9) "Releases of hazardous substances" means, for the purpose of this subchapter, any spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous substances into the environment;



(10) "Remedial action" means action necessary to effect permanent control, abatement, prevention, treatment, or containment of releases and threatened releases, including the removal of hazardous substances from the environment when removal is necessary to protect public health and the environment. Such actions are intended to include investigations designed to determine the need for and scope of remedial action and such planning, legal, fiscal, economic, engineering, geological, technical, or architectural studies as necessary to plan and direct remedial actions, to recover the cost thereof, and to enforce the provisions of this subchapter;

(11) "Removal action" means:

(A) The necessary cleanup or removal of a released hazardous substance from the environment;

(B) Necessary actions taken in the event of a threatened release of a hazardous substance into the environment;

(C) Actions necessary to monitor, test, analyze, and evaluate a release or threatened release of a hazardous substance;

(D) Disposal or processing of removed material; or

(E) Other actions necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment that may otherwise result from a release or threatened release;

(12) "Threatened release" means, for the purpose of this subchapter, any situation in which a sudden or nonsudden release of hazardous substances can be reasonably expected unless prevented by change of operation or installation or construction of containment or treatment devices or by removal or other remedial action; and

(13) "Treatment", "storage", "disposal", "generation", and "hazardous waste" shall have the meanings provided in § 8-7-203 and the regulations promulgated pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

**History.** Acts 1985, No. 479, § 3; A.S.A. 1947, § 82-4714; Acts 1995, No. 125, § 2; 1997, No. 1042, § 12(a); 1999, No. 1164, §§ 98, 99; 2005, No. 1824, § 8.

**A.C.R.C. Notes.** Acts 1995, No. 125, § 1, provided: "The General Assembly finds and declares as follow:

"(1) The redevelopment of abandoned industrial sites should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open space and natural and recreation areas and to prevent urban sprawl;

"(2) The redevelopment of abandoned industrial sites should be encouraged so that these sites can be returned to useful, tax producing properties to protect existing jobs and provide new job opportunities;

"(3) Persons interested in redeveloping abandoned industrial sites should have a method of determining what their legal liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;

"(4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup plans of abandoned industrial sites without the use of taxpayer funds or the need for adversarial enforcement actions by the Arkansas Department of Pollution Control and Ecology;

"(5) The Arkansas Department of Pollution Control and Ecology now routinely, through its permitting policies, determines when contamination will and will not pose unacceptable risks to public health or the environment and similar

concepts are used in establishing cleanup policies for abandoned industrial sites;

“(6) Parties and persons responsible under law for pollution at industrial sites should perform remedial responses which are fully consistent with existing requirements; and

“(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on industrial sites should meet alternative cleanup requirements if they acquire title after fully disclosing the nature of conditions at the site and declaring and committing to a specified future land use of the site.”

**U.S. Code.** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510,

is codified primarily as 42 U.S.C. § 9601 et seq.

Section 311(b)(2)(A) of the Federal Water Pollution Control Act, Public Law 92-500, referred to in this section, is codified as 33 U.S.C. § 1321(b)(2)(A).

Section 102 of Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, referred to in this section, is codified as 42 U.S.C. § 9602.

Section 307(a) of the Federal Water Pollution Control Act, referred to in this section, is codified as 33 U.S.C. § 1317(a).

Section 112 of the federal Clean Air Act, referred to in this section, is codified as 42 U.S.C. § 7412.

Section 7 of the Toxic Substances Control Act, referred to in this section, is codified as 15 U.S.C. § 2606.

## 8-7-504. Penalties.

(a)(1) Any person who commits any unlawful act under this subchapter shall be guilty of a misdemeanor and upon conviction shall be subject to imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000) or to both a fine and imprisonment.

(2) Each day or part of a day during which such violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this subchapter or commits any unlawful act under this subchapter shall be subject to:

(1) A civil penalty in such amount as the Director of the Arkansas Department of Environmental Quality shall find appropriate, not to exceed twenty-five thousand dollars (\$25,000) per day of the violation;

(2) The payment of any expenses reasonably incurred by the state in removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of the investigation, inspection, or survey establishing the violation or unlawful act; and

(3) The payment to the state of reasonable compensation of any actual damage resulting therefrom.

(c) One-half (½) of the civil penalties provided for in subdivision (b)(1) of this section, but not to exceed five hundred thousand dollars (\$500,000) in any one (1) calendar year and not to exceed four million dollars (\$4,000,000) in the aggregate, may be deposited in the Remedial Action Account in the Construction Assistance Revolving Loan Fund established pursuant to § 15-5-901, if so authorized by the Director of the Arkansas Department of Environmental Quality, and such moneys shall not be deposited or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12, Arkansas Constitution, Amendment 20, or any other constitutional or statutory provisions.

**History.** Acts 1985, No. 479, § 11; A.S.A. 1947, § 82-4722; Acts 1997, No. 1042, § 3.

### 8-7-505. Unlawful acts.

It shall be unlawful for any person:

(1) To violate any provision of this subchapter or any rule or regulation adopted under this subchapter;

(2) To knowingly make a false statement, representation, or certification in any report or other document filed or required by this subchapter or the rules and regulations adopted pursuant to this subchapter; or

(3) To violate any order issued by the Arkansas Department of Environmental Quality under this subchapter or any provision of such an order.

**History.** Acts 1985, No. 479, § 10; A.S.A. 1947, § 82-4721.

### 8-7-506. Regulations — Administrative procedure.

The Arkansas Pollution Control and Ecology Commission shall adopt regulations under this subchapter necessary to implement or effectuate the purposes and intent of this subchapter, including, but not limited to, regulations affording any persons aggrieved by any order issued pursuant to this subchapter an opportunity for a hearing thereon and commission review of the action.

**History.** Acts 1985, No. 479, § 13; A.S.A. 1947, § 82-4724. tion Control and Ecology Commission, hearings, § 8-4-212.

**Cross References.** Arkansas Pollu-

### CASE NOTES

**Cited:** Gurley v. Mathis, 313 Ark. 412, 856 S.W.2d 616 (1993).

### 8-7-507. Compliance of federal and state entities.

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government and the state government shall be subject to and comply with this subchapter in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.

**History.** Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719.



**8-7-508. Remedial and removal authority of the department.**

(a)(1) Upon finding that a hazardous substance site exists or may exist, the Arkansas Department of Environmental Quality, upon reasonable notice and after opportunity for hearing, may issue an order to any person liable for the site under § 8-7-512 if that person has caused or contributed to the release or threatened release of hazardous substances at the site. This order shall require that such remedial actions be taken as are necessary to investigate, control, prevent, abate, treat, or contain any releases or threatened releases of hazardous substances from the site.

(2) The fact that such a site is or is not listed by the Arkansas Pollution Control and Ecology Commission pursuant to § 8-7-509(e) shall in no manner limit the authority of the department under this subchapter.

(b) The Director of the Arkansas Department of Environmental Quality or any employee or authorized agent of the department may enter upon any private or public property for the purpose of collecting information under this subchapter and for initiating and implementing remedial actions.

(c) The director is authorized to initiate and implement remedial actions under this subchapter pursuant to the provisions of § 8-7-509.

(d) In taking removal or remedial actions pursuant to this subchapter, the department or any contractor of the department under this section shall not be required to obtain any state or local permit for the portion of any removal or remedial action conducted pursuant to this subchapter entirely on site when the removal or remedial action is otherwise carried out in compliance with the regulations of the department.

(e) The director is authorized to initiate and implement removal actions under this subchapter whenever there is a release or a threatened release of hazardous substances which may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment.

(f) Whenever the director has reason to believe that a release or threatened release of hazardous substances may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment, the director and the employees and the authorized representatives of the department shall have the right to enter upon any affected private or public property for the purpose of collecting information and for initiating and implementing appropriate removal or remedial actions.

(g) Removal actions are not authorized when the director has reasonable assurance that the person liable for a release or threatened release has committed to and is capable of initiating corrective and removal action in a timely manner and that the actions will achieve results equivalent to the results from removal action authorized in this section.

(h) Upon finding that a release or a threatened release of hazardous substances may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment, the director, without notice or hearing, may issue an order reciting the existence of such an imminent hazard and substantial endangerment and requiring that such removal actions be taken as he or she determines necessary to protect the health and safety of any affected or threatened persons or the environment and to otherwise meet the emergency.

(i) The order of the director issued under subsection (h) of this section may include, but is not limited to, requiring any person responsible in whole or in part for the release or threatened release or any person in total or partial control of the site, facility, or transport vehicle from which the release or threatened release emanates, if that person has caused or contributed to the release or threatened release, to take such steps as are necessary to protect the public health and safety and the environment.

(j) The director is not authorized to expend in excess of two hundred fifty thousand dollars (\$250,000) on any single removal action without approval of the commission.

(k)(1) The orders issued under subsection (h) of this section may be issued verbally or in writing.

(2) If originally issued verbally, a written order shall be issued by the director confirming the verbal order as soon as it is reasonably possible to do so.

(l) Any person to whom an order issued under subsection (h) of this section is directed shall comply with the order immediately but, upon written request to the commission within ten (10) days of the order's being issued by the director, shall be afforded a hearing and administrative review of the order within ten (10) days after filing the written request.

(m) A person shall not be deemed to be liable for, responsible for, or to have caused or contributed to the release or threatened release of hazardous substances pursuant to any provision of this subchapter if the person merely provides financing or loans to another person or obtains title to property through foreclosure or through conveyance of property in total or partial satisfaction of a mortgage or other security interest in property.

**History.** Acts 1985, No. 479, § 6; A.S.A. 1947, § 82-4717; Acts 1987, No. 761, § 3; 1989, No. 260, § 4; 2005, No. 1824, § 9.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

**8-7-509. Hazardous Substance Remedial Action Trust Fund.**

(a) The Hazardous Substance Remedial Action Trust Fund is created.

(b) The Hazardous Substance Remedial Action Trust Fund will be administered by the Director of the Arkansas Department of Environmental Quality, who shall authorize expenditures from the Hazardous Substance Remedial Action Trust Fund.

(c)(1) Any moneys remaining in the Emergency Response Fund as of June 30, 2005, shall be transferred in their entirety to the Hazardous Substance Remedial Action Trust Fund.

(2) Beginning July 1, 2005, the Hazardous Substance Remedial Action Trust Fund shall consist of all moneys received as penalties under §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, 8-4-301 — 8-4-313, 8-6-201 — 8-6-214, 8-7-201 — 8-7-226, 8-7-504, and 20-27-1001 et seq.

(3) In addition to all moneys appropriated by the General Assembly to the Hazardous Substance Remedial Action Trust Fund, there shall be deposited into the Hazardous Substance Remedial Action Trust Fund:

(A) Any moneys received by the state as a gift or donation to the Hazardous Substance Remedial Action Trust Fund;

(B) All interest earned upon money deposited in the Hazardous Substance Remedial Action Trust Fund;

(C) All fees assessed under § 8-7-518;

(D) All costs recovered from the Emergency Response Fund;

(E) All punitive damages collected pursuant to § 8-7-517; and

(F) Any other moneys legally designated for the Hazardous Substance Remedial Action Trust Fund.

(4) In addition, there is authorized to be deposited into the Hazardous Substance Remedial Action Trust Fund all moneys recovered pursuant to § 8-7-514 and all moneys received as penalties pursuant to § 8-7-504.

(d) Ten percent (10%) of the moneys collected for the Hazardous Substance Remedial Action Trust Fund after July 1, 1991, shall be deposited into the Environmental Education Fund. Total deposit of funds shall not exceed two hundred seventy-five thousand dollars (\$275,000) per fiscal year. The remaining moneys in the Hazardous Substance Remedial Action Trust Fund may be expended by the director as authorized by subsections (d) and (e) of this section:

(1) For the costs and expenses reasonably necessary for the administration of this subchapter by the Arkansas Department of Environmental Quality;

(2) For the state share mandated by § 104(c)(3) of the federal act, 42 U.S.C. § 9604(c)(3); and

(3) To provide for the investigation, identification, containment, abatement, treatment, or control, including monitoring and maintenance, of hazardous substance sites within the state. The director may enter into the contracts and use the funds for those purposes directly associated with identification, investigation, containment, abatement,



treatment, or control, including monitoring and maintenance, prescribed above, including:

(A) Hiring of personnel;

(B) Purchasing, leasing, or renting of equipment; and

(C) Other necessary expenses related to the operation and implementation of this subchapter.

(e) The moneys in the Hazardous Substance Remedial Action Trust Fund may be expended by the director for removal actions, including:

(1) The purchase of any commodities or services necessary in taking removal actions in connection with a release or threatened release; and

(2) Reimbursement of all costs incurred by the department in taking removal actions in connection with a release or threatened release.

(f)(1) No expenditures from the Hazardous Substance Remedial Action Trust Fund, as authorized by subdivisions (d)(2) and (3) of this section, shall be made prior to the approval by the Arkansas Pollution Control and Ecology Commission of a prioritized listing of hazardous substance sites at which remedial actions are authorized through the use of Hazardous Substance Remedial Action Trust Fund moneys. This listing shall be revised annually by the department and submitted to the commission for approval after public notice and opportunity for hearing.

(2) Upon a showing that a release of a hazardous substance at a site exists and will continue without expeditious remedial action, the commission may list the site on the prioritized listing pursuant to the procedures set out in § 8-4-202(e) prior to public notice and thereby authorize the director to expend funds pursuant to subdivision (d)(3) of this section. Such an emergency listing need not be supported by a factual showing of irreparable harm or imminent and substantial endangerment.

(g)(1) Notwithstanding the provisions of §§ 19-6-108 and 19-6-601, grants to the state under the federal Resource Conservation and Recovery Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act, as each may be amended from time to time, and otherwise from the United States Environmental Protection Agency received by the Treasurer of State from the federal government are declared to be cash funds restricted in their use and dedicated and are to be used solely as authorized in this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

(2) When received by the Treasurer of State, the cash funds shall not be deposited or deemed to be a part of the State Treasury for the purposes of Arkansas Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12, Arkansas Constitution, Amendment 20, or any other constitutional or statutory provisions.

(3) The Treasurer of State shall pay the cash funds to the Arkansas Development Finance Authority for deposit in the Brownfield Revolving Loan Fund established pursuant to the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq., to be used for the purposes authorized by this subchapter and the Arkansas Brownfield Revolving Loan Fund Act, § 15-5-1501 et seq.

(4) Such federal grants transferred directly to the authority are declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in this subchapter and the Arkansas Brown-field Revolving Loan Fund Act, § 15-5-1501 et seq.

**History.** Acts 1985, No. 479, §§ 4, 5; A.S.A. 1947, §§ 82-4715, 82-4716; Acts 1991, No. 746, § 2; 1991, No. 786, § 9; 1997, No. 1042, §§ 4, 5; 1999, No. 45, § 1; 2005, No. 1824, § 10; 2011, No. 1011, § 3.

**Publisher's Notes.** The Hazardous Substance Response Trust Fund referred to in subsection (a) of this section was created by former § 19-5-935 which was derived from Acts 1983, No. 539, § 14,

A.S.A., § 13-523.10 and which was repealed by Acts 1987, No. 928, § 6.

**Amendments.** The 2011 amendment deleted "8-4-401 et seq." following "8-4-313" in (c)(2).

**U.S. Code.** Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this section, is codified as 42 U.S.C. § 9604(c)(3).

## CASE NOTES

### ANALYSIS

In General.

Prioritized Listing.

### In General.

The Remedial Action Trust Fund was created by the General Assembly to meet the ten percent state contribution required by Congress before the Superfund monies could be expended to clean up a hazardous waste site under 42 U.S.C.

§ 9604(c). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

### Prioritized Listing.

Placement by the Arkansas Pollution Control and Ecology Commission of a site on the Remedial Action Trust Fund Priority List is a rulemaking function rather than an adjudicative proceeding. *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

## 8-7-510. Federal actions or compensation not to be duplicated.

No actions taken pursuant to this subchapter by the Arkansas Department of Environmental Quality shall duplicate federal actions, and no claims for the costs of response or other claims compensable under the federal act shall be compensable under this subchapter.

**History.** Acts 1985, No. 479, § 5; A.S.A. 1947, § 82-4716.

## CASE NOTES

**Cited:** *Arkansas ex rel. Bryant v. Dow Chem. Co.*, 981 F. Supp. 1170 (E.D. Ark. 1997).

## 8-7-511. Furnishing of information.

(a) For purposes of assisting in determining the need for remedial action in connection with a release or threat of release of hazardous substances under this subchapter or for enforcing the provisions of this subchapter, any person who stores, treats, or disposes of hazardous substances, or, if necessary to ascertain facts not available at the site or facility where the hazardous substances are stored, treated, or disposed

of, any person who generates, transports, otherwise handles, or has handled hazardous substances shall, upon request of any officer or employee of the Arkansas Department of Environmental Quality, furnish information relating to the substance and permit the person at all reasonable times to have access to and copy all records relating to the substances and to inspect and obtain samples of any such substances or other materials.

(b) However, any information which would constitute a trade secret under the Arkansas Trade Secrets Act, § 4-75-601 et seq., obtained by the department or its employees in the administration of this subchapter, except emission data, shall be kept confidential.

(c) Any violation of this section shall be unlawful and constitute a misdemeanor.

**History.** Acts 1985, No. 479, § 12;  
A.S.A. 1947, § 82-4723.

### **8-7-512. Liability for costs.**

(a) Any of the following shall be liable to the state for all costs of remedial or removal actions under this subchapter:

(1) The owner and operator of a facility;

(2) Any person who, at the time of disposal of any hazardous substance, owned or operated a hazardous substance site;

(3) Any generator of hazardous substances who caused such a substance to be disposed of at a hazardous substance site or who causes a release or threatened release of the hazardous substances; or

(4) Any transporter of hazardous substances who causes a release or threatened release of the hazardous substances or who selected a hazardous substance site for disposal of the hazardous substances.

(b)(1) No person shall be liable under this subchapter for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice at the direction of the Arkansas Department of Environmental Quality, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat of a release of a hazardous substance.

(2)(A) This subsection shall not preclude liability for damages as a result of gross negligence or intentional misconduct on the part of the person, nor shall this subsection preclude liability for damages and costs of remedial or removal action of any person liable for such damages and costs pursuant to subsection (a) of this section.

(B) For the purposes of subdivision (b)(2)(A) of this section, reckless, willful, or wanton misconduct shall constitute gross negligence.

(c)(1) A person taking remedial or removal action under this subchapter as a contractor for the department shall not be liable under this subchapter or under any other state law to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third



parties for death, personal injury, illness, loss of or damage to property, or economic loss resulting from a release or threatened release of hazardous substances.

(2) However, the provisions of this subsection shall not apply in case of a release that is caused by the conduct of the person taking remedial or removal action that is negligent or grossly negligent or which constitutes intentional misconduct.

(d) A state employee or an employee of a political subdivision who provides services relating to remedial or removal action while acting within the scope of his or her authority as a governmental employee shall have the same exemption from liability, subject to the other provisions of this section, as is provided to the removal or remediation action contractor under subsection (c) of this section.

(e)(1) Nothing in subsection (c) or subsection (d) of this section shall affect the liability of any person under warranty under state or common law.

(2) Nothing in this subsection shall affect the liability of an employer taking remedial or removal action to any employee of any such employer under any provision of law, including any provision of any law relating to workers' compensation.

**History.** Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; Acts 1987, No. 761, § 4; 1989, No. 441, § 2; 2005, No. 1824, § 3.

#### CASE NOTES

##### **No Liability Shown.**

Where the Arkansas Department of Environmental Quality's (DEQ) complaint was bereft of any factual allegations that, at the time of disposal, any of the customers of the corporation, which had improperly disposed of hazardous substances, caused hazardous substances to be dis-

posed of, and where the customers did not violate subdivisions (a)(3) and (4), the trial court properly dismissed DEQ's complaint pursuant to Ark. R. Civ. P. 8(a) and 12(b)(6). *Ark. Dep't of Env'tl. Quality v. Brighton Corp.*, 352 Ark. 396, 102 S.W.3d 458 (2003).

##### **8-7-513. Apportionment of costs.**

(a)(1) Any party found liable for any costs or expenditures recoverable under §§ 8-7-512, 8-7-514, 8-7-515, and 8-7-517 which establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for that portion.

(2) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures, the court shall apportion the costs or expenditures, to the extent practicable, according to equitable principles, among the responsible parties.

(3) The Hazardous Substance Remedial Action Trust Fund shall pay any portion of the total expenditure in excess of the aggregate amount of costs or expenditures apportioned pursuant to this section.

(b)(1) In any action under this section, no responsible party shall be liable for more than that party's apportioned share of the amount expended from the fund for the site.

(2) The apportioned share shall be based on a responsible party's total volume of the hazardous substance at the hazardous substance site at the time of action taken under this subchapter.

(3) Any expenditures required by the provisions of this subchapter made by a responsible party, before or after suit, shall be credited toward any apportioned share.

**History.** Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719.

### **8-7-514. Recovery of expenditures generally.**

(a) After an expenditure from the Hazardous Substance Remedial Action Trust Fund for a removal or remedial action, the Arkansas Department of Environmental Quality shall institute action to recover the expenditure from the person or persons liable for causing the hazardous substance release, including taking any appropriate legal action.

(b) Making use of any and all appropriate existing state legal remedies, the department or the Attorney General shall act to recover the amount expended by the state for any and all remedial or removal actions from any and all parties identified as responsible parties for each hazardous substance.

(c) All moneys recovered from responsible parties pursuant to this section shall be deposited in the fund.

**History.** Acts 1985, No. 479, §§ 8, 9; 1991, No. 516, § 3; 1999, No. 1164, § 100; A.S.A. 1947, §§ 82-4719, 82-4720; Acts 2005, No. 1824, § 11.

### **8-7-515. Recovery of expenditures — Limitations.**

No person, including the state, may recover under the authority of this section for any remedial or removal action costs or damages resulting:

(1) From the application, in accordance with label directions of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act; or

(2) Solely from an act or omission of a third party or from an act of God or an act of war.

**History.** Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; 2005, No. 1824, § 12. Fungicide, and Rodenticide Act, referred to in this section, is codified primarily as 7 U.S.C. § 136 et seq.

**CASE NOTES****In General.**

The General Assembly, in enacting this subchapter, the Remedial Action Trust Fund Act (RAFTA), provided that no person, including the state, could recover under the authority of subdivision (2) of

this section for any remedial action costs or damages resulting solely from an act or omission of a third party, including customers of a corporation. Ark. Dep't of Env'tl. Quality v. Brighton Corp., 352 Ark. 396, 102 S.W.3d 458 (2003).

**8-7-516. Liens for expenditures and value of improvements.**

(a) If the owner of real property that is the location of a hazardous substance site upon which remedial or removal activity is performed under this subchapter is responsible, in whole or in part, for causing the hazardous substance release, there shall exist a lien against the property for the moneys expended. If the expenditure results in an increase in the value of the property, the lien shall also be for the increase in value.

(b) The lien shall be effective upon the filing by the Director of the Arkansas Department of Environmental Quality of a notice of lien with the circuit clerk in the county in which the land is located.

(c) The lien obtained by this section shall not exceed the amount of expenditures, as itemized on an affidavit of expenditures attached to and filed with the notice of lien, and the increase in property value as a result of the removal, remedial, or abatement action taken, as determined by an independent appraisal, a copy of which shall be attached to and filed with the notice of lien.

(d) The notice of lien shall be filed within thirty (30) days of the date of the last act performed on the property by the Arkansas Department of Environmental Quality or its agent under this subchapter.

(e) Upon filing of the notice of lien, a copy with attachments shall be served upon the property owner in the manner provided for enforcement of mechanics' or materialmen's liens.

(f) Any and all moneys recovered or reimbursed pursuant to this section through voluntary agreements or court orders shall be deposited and credited to the account of the Hazardous Substance Remedial Action Trust Fund.

**History.** Acts 1985, No. 479, § 9; A.S.A. 1947, § 82-4720; Acts 1988 (3rd Ex. Sess.), No. 15, § 2; 2005, No. 1824, § 13.

**8-7-517. Punitive damages.**

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide remedial or removal action upon order of the Arkansas Department of Environmental Quality, the person may be liable to the state for punitive damages in an amount equal to three (3) times the amount of any costs incurred by the state as a result of the failure to take proper action.



**History.** Acts 1985, No. 479, § 8; A.S.A. 1947, § 82-4719; 2005, No. 1824, § 14.

### **8-7-518. Fees on the generation of hazardous waste.**

(a) On or before April 1 of each year, the following persons shall report the total amount of such hazardous wastes generated or accepted to the Director of the Arkansas Department of Environmental Quality, except as provided in this section, on forms prescribed by the Arkansas Department of Environmental Quality:

(1) Every person who generated hazardous wastes in Arkansas during the preceding year; and

(2) Every person who accepted for treatment, storage, or disposal in Arkansas during the preceding year hazardous wastes generated outside the state.

(b)(1)(A) Except as provided in this section, there is assessed a fee to be collected by the department upon every person who generated hazardous wastes in Arkansas or who accepted hazardous wastes generated outside of the state which were subsequently received for treatment, storage, or disposal in Arkansas based upon the combined total of such wastes as are required to be reported pursuant to subsection (a) of this section.

(B) The fees shall be calculated and paid according to a schedule to be adopted by regulation of the Arkansas Pollution Control and Ecology Commission, not to exceed a maximum of ten thousand dollars (\$10,000) annually per facility.

(2)(A) No person shall be required to pay fees based on the quantity of hazardous wastes generated when such wastes are managed in a totally enclosed treatment facility, an elementary neutralization unit, or a wastewater treatment unit, or when the wastes are otherwise excluded by regulation from inclusion in a facility's determination of its compliance status or category as a generator.

(B) Any person who has paid such fees for wastes generated in 1997 or later years shall be entitled to a refund upon application for a refund.

(C) The department shall calculate the amount of fee refund due and provide the applicant with a copy of the calculation.

(D) The department shall promptly pay any refund due from the Hazardous Substance Remedial Action Trust Fund.

(c) On or before July 1 of each year, each person subject to subsection (a) of this section shall pay to the department the fee required by subsection (b) of this section.

(d) To the extent practicable, the department shall coordinate the reporting requirements of this section with the reporting requirements of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the regulations adopted thereunder. The content of the reporting shall be consistent with federal reporting requirements pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., in all respects with the exception of frequency.

(e) The department shall prepare annually a statement of all revenues collected by the fees hereunder, as well as all other revenues to the fund, and all expenditures therefrom and obligations thereof and the current balance in the fund.

**History.** Acts 1985, No. 479, § 7; A.S.A. 1947, § 82-4718; Acts 1987, No. 380, § 1; 1999, No. 1041, §§ 1-3.

### 8-7-519. Appeals.

An appeal may be taken from any final order of the Arkansas Department of Environmental Quality under this subchapter as provided in §§ 8-4-202, 8-4-210, 8-4-212—8-4-214, 8-4-218, 8-4-219, and 8-4-221 — 8-4-229 and in accordance with regulations promulgated by the Arkansas Pollution Control and Ecology Commission under this subchapter.

**History.** Acts 1985, No. 479, § 13; A.S.A. 1947, § 82-4724; 2005, No. 1824, § 15.

**Cross References.** Arkansas Pollution Control and Ecology Commission, appeals, §§ 8-4-222 — 8-4-229.

### CASE NOTES

**Cited:** Gurley v. Mathis, 313 Ark. 412, 856 S.W.2d 616 (1993).

### 8-7-520. Contribution.

(a) Any person who has undertaken or is undertaking remedial action at a hazardous substance site in response to an administrative or judicial order initiated against such person pursuant to §§ 8-7-508 or 8-7-1104(d) may obtain contribution from any other person who is liable for such hazardous substance site.

(b) Any person who has resolved all or a portion of his or her liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicially approved settlement may obtain contribution from any person who is liable for such hazardous substance site and is not a party to the settlement.

(c) Those persons identified under § 8-7-512(a) shall be the persons liable for the hazardous substance site.

(d) An action for contribution may be brought in the circuit court of the county in which the hazardous substance site is located. In resolving contribution claims, the court shall allocate the costs and expenses incurred or to be incurred by the contribution claimant or claimants for undertaking remedial action among all persons liable for the hazardous substance site, using such equitable factors as the court determines are appropriate.

(e) Any person who has resolved all or a portion of his or her liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicial proceeding or settlement shall not

be liable for claims for contribution regarding matters addressed in the order or settlement which have been satisfactorily resolved. Such order or settlement does not discharge any of the other persons liable for the hazardous substance site who did not undertake or participate in the remedial action, unless the terms of the order or settlement so provide.

(f) This section shall apply to any claim for contribution initiated after March 9, 1989.

(g) No action for contribution may be commenced more than three (3) years after the date of the administrative or judicial order or settlement with respect to such remedial action. In any such action, the court shall enter a declaratory judgment on liability that will be binding on any subsequent action to recover costs and expenses for remedial action.

(h) In any action for contribution, judicial review of any issues concerning the adequacy of the remedial action shall be limited to the administrative record to determine whether the selected remedy contained in the order or settlement is arbitrary or capricious, and then only such costs and expenses as are found to be inconsistent with those terms of the administrative or judicial order or settlement found to be arbitrary or capricious may be disallowed.

**History.** Acts 1989, No. 441, § 3; 1995, No. 125, § 3; 1997, No. 1042, § 2.

**A.C.R.C. Notes.** Acts 1995, No. 125, § 1, provided: "The General Assembly finds and declares as follow:

"(1) The redevelopment of abandoned industrial sites should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open space and natural and recreation areas and to prevent urban sprawl;

"(2) The redevelopment of abandoned industrial sites should be encouraged so that these sites can be returned to useful, tax producing properties to protect existing jobs and provide new job opportunities;

"(3) Persons interested in redeveloping abandoned industrial sites should have a method of determining what their legal liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;

"(4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup

plans of abandoned industrial sites without the use of taxpayer funds or the need for adversarial enforcement actions by the Arkansas Department of Pollution Control and Ecology;

"(5) The Arkansas Department of Pollution Control and Ecology now routinely, through its permitting policies, determines when contamination will and will not pose unacceptable risks to public health or the environment and similar concepts are used in establishing cleanup policies for abandoned industrial sites;

"(6) Parties and persons responsible under law for pollution at industrial sites should perform remedial responses which are fully consistent with existing requirements; and

"(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on industrial sites should meet alternative cleanup requirements if they acquire title after fully disclosing the nature of conditions at the site and declaring and committing to a specified future land use of the site."

### 8-7-521. Site access for remedial or removal action.

(a) For purposes of responding to an administrative or judicial order or settlement entered pursuant to § 8-7-508, the owner or the operator of a facility that is a hazardous substance site, or any person who



otherwise controls access to such a facility, shall provide access to the Arkansas Department of Environmental Quality, any employee of the department, or any other person, duly designated by the Director of the Arkansas Department of Environmental Quality, who undertakes such activities as are required to carry out the terms of the order or settlement.

(b) Any person who impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial or removal action at a hazardous substance site pursuant to the terms of an administrative or judicial order or settlement may be assessed a civil penalty by the department in an administrative proceeding or by the court in a judicial proceeding for a site access injunction of up to ten thousand dollars (\$10,000) per day that site access is impeded.

(c) Any person who knowingly impedes or interferes with a person who is entitled to site access for the purpose of conducting remedial or removal action at a hazardous substance site pursuant to the terms of an administrative or judicial order or settlement shall be guilty of a misdemeanor, punishable by a fine of up to one thousand dollars (\$1,000) or imprisonment for up to one (1) year, or both.

**History.** Acts 1989, No. 441, § 3; 2005, No. 1824, § 16.

#### **8-7-522. Liability for actions relating to remedial actions.**

(a) No shareholder, director, or officer of a corporation or a grantor or trustee of a trust whose sole purpose, as stated in its articles of incorporation or its trust agreement, is to conduct remedial action at a hazardous substance site pursuant to an administrative or judicial order or settlement under § 8-7-508 shall be liable to any person for any action of the corporation or trust reasonably related to the stated purpose of the corporation or trust.

(b) This section shall not apply to any action of the corporation or trust resulting from the gross negligence or intentional misconduct of a shareholder, director, or officer of said corporation, or a grantor or trustee of said trust.

(c) Nothing herein shall be construed to alter the liability of any person for the hazardous substance site under this subchapter, nor shall the liability of any such person be expanded as a result of such person undertaking remedial action or serving as a shareholder, officer, or director of a corporation or as a grantor or trustee of a trust which undertakes remedial action pursuant to an administrative or judicial order or settlement under § 8-7-508.

**History.** Acts 1989, No. 441, § 3.

**8-7-523. [Repealed.]**

**Publisher's Notes.** This section, concerning applicability of this subchapter to a prospective purchaser, was repealed by

Acts 1997, No. 1042, § 12. The section was derived from Acts 1995, No. 125, § 4. For present law, see § 8-7-1101 et seq.

**8-7-524. Recycling transactions.**

(a) The purposes of this section are:

(1) To promote the reuse and recycling of scrap material in Arkansas while protecting human health and the environment;

(2) To promote the goals of the Arkansas Pollution Prevention Act, § 8-10-201 et seq., and related Arkansas legislation intended to encourage recycling;

(3) To create greater equity in the statutory treatment of recycled versus virgin materials;

(4) To remove the disincentives and impediments to recycling in Arkansas created as an unintended consequence of certain liability provisions contained in this subchapter; and

(5) To incorporate into this subchapter amendments to the federal Comprehensive Environmental Response, Compensation, and Liability Act adopted by the United States Congress in 1999 in Pub. L. No. 106-113, thus ensuring that Arkansas law does not contain more stringent provisions than federal law.

(b)(1) As provided in subsections (c)-(f) of this section, a person who arranged for recycling of recyclable material shall not be liable under § 8-7-512(a)(3) or (4) with respect to the recyclable materials.

(2) Nothing in this section shall be deemed to affect the liability of a person under § 8-7-512(a)(3) or (4) with respect to materials that are not recyclable materials as defined in subsection (c) of this section.

(c)(1) For purposes of this section, "recyclable material" means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap.

(2) However, "recyclable material" does not include:

(A) Shipping containers of a capacity from thirty liters (30 l) to three thousand liters (3,000 l), whether intact or not, having any hazardous substance, but not metal bits and pieces or hazardous substance that form an integral part of the container, contained on or adhering thereto; or

(B) Any item of material that contains polychlorinated biphenyls at a concentration in excess of fifty (50) parts per million or any new standard promulgated pursuant to applicable federal laws.

(d) Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber other than whole tires shall be deemed to be arranging for recycling of recyclable materials, if the person who arranged for the transaction by selling recyclable material or otherwise

arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that all of the following criteria were met at the time of the transaction:

- (1) The recyclable material met a commercial specification grade;
- (2) A market existed for the recyclable material;
- (3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a salable new product;
- (4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from virgin raw material;
- (5) For transactions occurring ninety (90) days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person, i.e., a consuming facility, was in compliance with substantive, not procedural or administrative, provisions of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material; and
- (6) For purposes of this subsection, "reasonable care" shall be determined using criteria that include:

- (A) The price paid in the recycling transaction;

- (B) The ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with recyclable material; and

- (C)(i) The result of inquiries made to the appropriate federal, state, or local environmental agency regarding the consuming facility's past and current compliance with substantive, not procedural or administrative, provisions of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material.

- (ii) For the purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

- (e)(1) Transactions involving scrap metal shall be deemed to be arranging for recycling, if the person who arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that at the time of the transaction the person:

- (A) Met the criteria set forth in subsection (d) of this section with respect to the scrap metal;

- (B) Was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activi-



ties associated with the recycling of scrap metal that the Arkansas Pollution Control and Ecology Commission promulgates after the enactment of this section and with regard to transactions occurring after the effective date of those regulations or standards; and

(C) Did not melt the scrap metal prior to the transaction.

(2) For purposes of subdivision (e)(1)(C) of this section, melting of scrap metal does not include the thermal separation of two (2) or more materials due to differences in their melting points, referred to as "sweating".

(3) Except for scrap metals that the United States Environmental Protection Agency or the commission excludes from this definition by regulation, for purposes of this subsection, the term "scrap metal" means:

(A) Bits and pieces of metal parts, such as bars, turnings, rods, sheets, or wire; or

(B) Metal pieces that may be combined together with bolts or soldering, such as radiators, scrap automobiles, or railroad box cars, which when worn or superfluous can be recycled.

(f) Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling, if the person who arranged for the transaction by selling recyclable material or otherwise arranging for the recycling of recyclable material can demonstrate by a preponderance of the evidence that at the time of the transaction:

(1) The person:

(A) Met the criteria set forth in subsection (d) of this section with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but did not recover the valuable components of such batteries; and

(B) With respect to transactions involving lead-acid batteries, was in compliance with applicable federal and Arkansas environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

(2) With respect to transactions involving nickel-cadmium batteries, federal and Arkansas environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

(3) With respect to transactions involving other spent batteries, federal and Arkansas environmental regulations or standards were in effect regarding the storage, transport, management, or other activities associated with the recycling of those batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

(g)(1) The exemptions set forth in subsections (d)-(f) of this section shall not apply if the person:

(A) Had an objectively reasonable basis to believe at the time of the recycling transaction:

(i) That the recyclable material would not be recycled;

(ii) That the recyclable material would be burned as fuel, or for energy recovery or incineration; or

(iii) For transactions occurring before ninety (90) days after the date of the enactment of this section, that the consuming facility was not in compliance with a substantive, not procedural or administrative, provision of any federal, state, or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

(B) Had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

(C) Failed to exercise reasonable care with respect to the management and handling of the recyclable material, including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances.

(2) For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include:

(A) The size of the person's business;

(B) Customary industry practices, including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances;

(C) The price paid in the recycling transaction; and

(D) The ability of the person to detect the nature of the consuming facility's operations concerning its handling, processing, reclamation, or other management activities associated with the recyclable material.

(3) For purposes of this subsection, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activities associated with recyclable material shall be deemed to be a substantive provision.

(h) Nothing in this section shall be deemed to affect the liability of a person under § 8-7-512(a)(1) or (2).

(i) The commission is authorized to promulgate additional rules and regulations concerning this section.

(j) The exemptions provided in this section shall not affect any concluded judicial or administrative action or any pending judicial action initiated by the State of Arkansas before enactment of this section.

(k)(1) Any person who commences an action in contribution against a person who is not liable by operation of this section shall be liable to that person for all reasonable costs of defending that action, including all reasonable attorney's and expert witness fees.

(2) For the purposes of this subsection, the term “person” shall not include an agency, board, commission, or department of the State of Arkansas.

(1) Nothing in this section shall affect:

(1) Liability under any other federal, Arkansas, or local statute or regulation promulgated pursuant to any such statute, including any requirements promulgated by the commission under the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.; or

(2) The ability of the commission to promulgate regulations under any other statute, including the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(m) Nothing in this section shall be construed to:

(1) Affect any defenses or liabilities of any person to whom subdivision (b)(1) of this section does not apply; or

(2) Create any presumption of liability against any person to whom subdivision (b)(1) of this section does not apply.

**History.** Acts 2001, No. 449, § 2. (e)(1)(B), and (g)(1)(A)(iii), Acts 2001, No. 449 became effective August 13, 2001.  
**A.C.R.C. Notes.** Regarding references to “the enactment of this section” in (d)(5),

RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 475.

8-7-525. Appropriation.

On or after July 1, 2005, any appropriation made payable from the Emergency Response Fund shall be made payable from the Hazardous Substance Remedial Action Trust Fund.

**History.** Acts 2005, No. 1824, § 17.

SUBCHAPTER 6 — LOW-LEVEL RADIOACTIVE WASTE

SECTION.	SECTION.
8-7-601. Definitions.	8-7-603. Approval and issuance of permits.
8-7-602. Disposal or storage in above-ground facilities.	8-7-604. Compact provisions controlling.

**Cross References.** Central Interstate Low-Level Radioactive Waste Compact, § 8-8-201 et seq.

8-7-601. Definitions.

As used in this subchapter, unless the context otherwise requires:



(1) "Above-ground facility" means any facility which has a substantial portion of its structure above ground; and

(2) "Low-level radioactive waste" means radioactive material that:

(A) Is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined in § 11e(2) of the Atomic Energy Act of 1954; and

(B) The Nuclear Regulatory Commission, consistent with existing law and in accordance with subdivision (2)(A) of this section, classifies as low-level radioactive waste.

**History.** Acts 1987, No. 562, § 1.

**U.S. Code.** Section 11e(2) of the Atomic Energy Act of 1954, referred to in this section, probably refers to 42 U.S.C. § 2014(e)(2).

**Cross References.** Definitions for disposal of solid wastes and other refuse, § 8-6-203.

### **8-7-602. Disposal or storage in aboveground facilities.**

(a) In the event that low-level radioactive waste is required to be disposed of or stored in the State of Arkansas, the waste shall be disposed of or stored only in aboveground facilities.

(b) All aboveground facilities shall be so designed, constructed, and maintained as to prevent any accidental release of the wastes or any harmful substance in the facility as a result of flooding, earthquakes, tornadoes, or other occurrences, to permit effective surveillance of the facilities and the wastes in it, and to permit retrievability of any waste stored in the facilities for testing and other appropriate purposes.

**History.** Acts 1987, No. 562, § 2.

### **8-7-603. Approval and issuance of permits.**

Neither the Arkansas Department of Environmental Quality nor any other agency or authority having the responsibility for approving and issuing permits for facilities for the disposal or storage of low-level radioactive waste in this state shall have the authority to approve or issue a permit for any facility unless the facility will fully comply with the requirements of this subchapter in all respects.

**History.** Acts 1987, No. 562, § 3; 1999, No. 1164, § 101.

### **8-7-604. Compact provisions controlling.**

The implementation of this subchapter will not affect Arkansas's continued membership in the Central Interstate Low-Level Radioactive Waste Compact Commission. If any provision of this subchapter is in conflict with the provisions of the Central Interstate Low-Level Radioactive Waste Compact, § 8-8-201 et seq., the provisions of the compact shall be controlling.

**History.** Acts 1987, No. 562, § 4.

## SUBCHAPTER 7 — FEDERALLY LISTED HAZARDOUS SITES

### SECTION.

8-7-701. Legislative intent.

8-7-702. Definitions.

8-7-703. Interference by passive-site owners.

8-7-704. Injunction.

### SECTION.

8-7-705. Restrictions on use of hazardous substances.

8-7-706. Ad valorem tax exemption.

8-7-707. Director and officer liability.

**Effective Dates.** Acts 1989, No. 350, § 11: Mar. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is urgent that appropriate action be taken to promote and encourage implementation of response actions at federally listed hazardous sites; that this act is designed to promote and encourage appropriate re-

sponse actions at such sites as soon as possible and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

### 8-7-701. Legislative intent.

The purpose of this subchapter is to encourage response actions at federally listed hazardous sites, to facilitate agreements related to property access and use to implement response actions at federally listed hazardous sites, to discourage activities that interfere with or obstruct such response actions, and to provide for the future use of federally listed hazardous sites after remediation.

**History.** Acts 1989, No. 350, § 1.

## CASE NOTES

### In General.

The Remedial Action Trust Fund (see § 8-7-501 et seq.) was created by the General Assembly to meet the ten percent state contribution required by Congress

before the Superfund monies could be expended to clean up a hazardous waste site under 42 U.S.C. § 9604(c). *Gurley v. Mathis*, 313 Ark. 412, 856 S.W.2d 616 (1993).

**8-7-702. Definitions.**

As used in this subchapter, the following terms shall have the following meanings:

(1) "Hazardous site" means any geographic area located, in whole or in part, in the State of Arkansas, access to or use of which is determined by the Arkansas Department of Environmental Quality to be necessary or appropriate to implement a response ordered by the President of the United States;

(2)(A) "Hazardous substance" shall mean:

(i) Any substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act;

(ii) Any element, compound, mixture, solution, or substance designated pursuant to § 102 of the Federal Water Pollution Control Act;

(iii) Any hazardous waste having the characteristics identified under or listed pursuant to § 3001 of the Solid Waste Disposal Act, but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of Congress;

(iv) Any toxic pollutant listed under § 307(a) of the Federal Water Pollution Control Act;

(v) Any hazardous air pollutant listed under § 112 of the Clean Air Act; and

(vi) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to § 7 of the Toxic Substances Control Act.

(B) The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subdivisions (2)(A)(i)-(2)(A)(vi) of this section, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas;

(3) "Passive-site owner" shall mean any person or entity owning any interest in any portion of a hazardous site, whether as owner, joint tenant, lessee, mortgagee, licensee, easement holder, mineral owner, or otherwise, and who has not entered into an agreement pursuant to 42 U.S.C. § 9622 for that site;

(4) "Response costs" shall mean all amounts of removal or remedial action, including any costs and expenses incurred as a result of contractor delays, and other necessary amounts, including attorney's fees and expenses reasonably incurred by any entity, including, but not limited to, the United States of America, the State of Arkansas, the governments of any other states, corporations, partnerships, and private citizens to investigate and secure a response action at a hazardous site; and

(5) "Settling party" shall mean any person who has entered into an agreement with the United States pursuant to 42 U.S.C. § 9622.



tion Control Act, referred to in this section, are codified as 33 U.S.C. §§ 1252, 1317(a) and 1321(b)(2)(A), respectively.

The Solid Waste Disposal Act, referred to in this section, is codified as 42 U.S.C. § 6901 et seq.

Section 3001 of the Solid Waste Disposal Act, referred to in this section, is codified as 42 U.S.C. § 6921.

The Toxic Substances Control Act, referred to in this section, is codified as 15 U.S.C. § 2601 et seq.

Section 112 of the Clean Air Act, referred to in this section, is codified as 42 U.S.C. § 7412.

### **8-7-703. Interference by passive-site owners.**

(a) No passive-site owner shall unduly impede or interfere with the efforts of a settling party to carry out an approved response action at a hazardous site.

(b) Any passive-site owner who violates subsection (a) of this section shall be liable for any response costs resulting from such violation.

**History.** Acts 1989, No. 350, §§ 3, 4.

### **8-7-704. Injunction.**

The circuit court of the county in which the hazardous site is located shall have jurisdiction to enjoin any passive-site owner from unduly impeding or interfering with the implementation of a response action at such hazardous site.

**History.** Acts 1989, No. 350, § 5.

### **8-7-705. Restrictions on use of hazardous substances.**

Construction on or at a hazardous site and the use of such site for any residential, commercial, manufacturing, industrial, or recreational purposes shall be prohibited unless and until the Arkansas Department of Environmental Quality issues an order terminating, wholly or partially, such prohibitions. Such order shall be subject to the procedural guidelines set forth in §§ 8-4-212 — 8-4-214 and 8-4-222 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

**History.** Acts 1989, No. 350, § 6; 1999, No. 1164, § 103.

### **8-7-706. Ad valorem tax exemption.**

Upon initiation of a response action at a hazardous site, such site shall be appraised at no value for purposes of any ad valorem taxes levied by any state, county, or local governmental authority unless and until the Arkansas Department of Environmental Quality issues an order wholly terminating the construction and use prohibitions established by § 8-7-705. This section shall not apply to the interest in such hazardous site owned by any passive-site owner or its successors and assigns that have violated § 8-7-703(a).

**History.** Acts 1989, No. 350, § 7; 1999, No. 1164, § 104.

### 8-7-707. Director and officer liability.

No director or officer of a corporation whose sole purpose as stated in its articles of incorporation is to own, implement a response action at, or hold one (1) or more hazardous sites, shall be liable to any person or entity for any action of the corporation reasonably related to the stated purpose of the corporation. This section shall not apply to any action of the corporation resulting from the gross negligence or willful misconduct of a director or officer of said corporation.

**History.** Acts 1989, No. 350, § 8.

## SUBCHAPTER 8 — REGULATED SUBSTANCE STORAGE TANKS

### SECTION.

- 8-7-801. Definitions and exceptions.
- 8-7-802. Department and commission — Powers and duties.
- 8-7-803. Regulations generally.
- 8-7-804. Procedures of department generally.
- 8-7-805. License requirement.
- 8-7-806. Penalties.
- 8-7-807. Responsibility and liability of owner.
- 8-7-808. Regulated Substance Storage Tank Program Fund.

### SECTION.

- 8-7-809. Corrective actions — Orders of director.
- 8-7-810. Insurance pools.
- 8-7-811. Trade secrets.
- 8-7-812. Subchapter controlling over other laws.
- 8-7-813. Registration.
- 8-7-814. Delivery prohibition.
- 8-7-815. [Repealed.]
- 8-7-816. Secondary containment.
- 8-7-817. Operator training.

**A.C.R.C. Notes.** Acts 1989, No. 172, § 14, provided: "If any provision of this act is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act."

**Effective Dates.** Acts 1989, No. 172, § 17; July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 1989 is essential to the operation of the Underground Storage Tank Program created herein in the Department of Pollution Control and Ecology and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administra-

tion and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 594, § 5; Mar. 18, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective and efficient administration of the Regulated Storage Tank Program that this act be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Identical Acts 1995, Nos. 427 and 436, § 5; Feb. 24, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essen-

tial to the effective and efficient administration of the Regulated Storage Tank Program and the Petroleum Storage Tank Trust Fund that this act be given effect immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1471, § 6: Apr. 10, 2001. Emergency clause provided: "It is hereby found and determined by the 83rd General Assembly that under present law a requirement for Petroleum Storage Tank Trust Fund eligibility is substantial compliance with applicable federal and state requirements. This eligibility requirement poses two significant problems. First, a storage tank owner or operator found ineligible for the Petroleum Storage Tank Trust Fund reimbursement is in reality penalized tens of thousands of dollars that are typically expended on investigation and/or remediation of petroleum releases. Second, the difficulty specifying the type of conduct that constitutes substantial compliance generates uncertainty as to whether the Petroleum Storage Tank Trust Fund will be available to owners or operators of such equipment. Consequently, it has been determined that instead of judging trust fund eligibility on the basis of substantial compliance, requiring owners and operators of storage tanks to annually complete and submit to the department self-inspection audits will better enhance environmental protection. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2007, No. 264, § 6: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the distribution of federal funds to implement and effectuate the purpose and intent of this act and to carry out other essential governmental services relating to an underground storage tank release detection, prevention, corrective action, and financial responsibility program as required by the Resource Conservation and Recovery Act of 1976 as it exists on January 1, 2007, is contingent upon implementing certain provisions of this act by February 8, 2007; that such federal funds are necessary to continue to provide essential governmental services; and that this act is immediately necessary because a delay in the effective date of this act may result in the loss of federal funds which could work irreparable harm upon the proper administration and provision of essential governmental services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

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## 8-7-801. Definitions and exceptions.

As used in this subchapter:



(1)(A) "Aboveground storage tank" means any one (1) or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, whose capacity is greater than one thousand three hundred twenty gallons (1,320 gals.) and not more than forty thousand gallons (40,000 gals.) and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products.

(B) Such term does not include mobile storage tanks used to transport petroleum from one location to another or those used in the production of petroleum or natural gas;

(2) "Adjacent property owner" means any person, other than an owner or operator, owning an interest in any property affected by a release;

(3) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(4) "Department" means the Arkansas Department of Environmental Quality;

(5) "Operator" means any person in control of or having responsibility for the daily operation of an underground storage tank;

(6)(A) "Owner" means:

(i) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and

(ii) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

(B) "Owner" does not include any person who, without participation in the management of an underground storage tank, holds indicia of ownership primarily to protect a security interest in the tank;

(7) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(8) "Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths pounds (14.7 lbs.) per square inch absolute);

(9) "Regulated substance" means:

(A) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; and

(B) Petroleum;

(10)(A) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

(B) "Release" does not include releases that are permitted or authorized by the department or by federal law;

(11) "Secondary containment" means a release prevention and release detection system for an underground storage tank or piping, or both, that provides an inner barrier and an outer barrier and an interstitial space between the two (2) barriers for monitoring to detect the presence of a leak or release of regulated substances from the underground storage tank or piping, or both;

(12) "Storage tank" means an aboveground storage tank or underground storage tank as defined in this subchapter; and

(13) "Underground storage tank" means any one (1) or combination of tanks, including underground pipes connected thereto, which is or has been used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground. Such term does not include any:

(A) Farm or residential tank of one thousand one hundred gallons (1,100 gals.) or less capacity used for storing motor fuel for noncommercial purposes;

(B) Tank used for storing heating oil for consumptive use on the premises where stored;

(C) Septic tank;

(D) Pipeline facility, including gathering lines, regulated under:

(i) The Natural Gas Pipeline Safety Act of 1968; and

(ii) The Hazardous Liquid Pipeline Safety Act of 1979;

(E) Surface impoundment, pit, pond, or lagoon;

(F) Storm water or wastewater collection system;

(G) Flow-through process tank;

(H) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(I) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(J) Pipes connected to any tank that is described in subdivisions (13)(A)-(I) of this section.

**History.** Acts 1989, No. 172, § 1; 1993, No. 810, § 1; 1995, No. 427, § 1; 1995, No. 436, § 1; 1999, No. 600, § 1; 1999, No. 1164, § 105; 2001, No. 1471, § 1; 2007, No. 264, § 1; 2009, No. 282, § 1.

**Amendments.** The 2007 amendment inserted (11) and redesignated the following subdivisions accordingly; and substituted "(14)" for "(13)" in present (14)(J).

The 2009 amendment deleted (13), which defined "storage tank self-inspection audit," redesignated the subsequent subdivision accordingly, and substituted "(13)" for "(14)" in (13)(J).

**U.S. Code.** Section 101(14) of the Com-

prehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this section, is codified as 42 U.S.C. § 9601(14).

Subtitle C of the Resource Conservation and Recovery Act of 1976, referred to in this section, is codified as 42 U.S.C. § 6921 et seq.

The Natural Gas Pipeline Safety Act of 1968, referred to in this section, is codified as 49 U.S.C. § 1671 et seq.

The Hazardous Liquid Pipeline Safety Act of 1979, referred to in this section, is codified primarily as 49 U.S.C. § 60101 et seq.

**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Survey of assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 475.

**8-7-802. Department and commission — Powers and duties.**

(a) The Arkansas Pollution Control and Ecology Commission shall have the following powers and duties:

(1) To promulgate, after notice and public hearing, and to modify, repeal, and enforce, as necessary or appropriate to implement or effectuate the purposes and intent of this subchapter, rules and regulations relating to an underground storage tank release detection, prevention, corrective action, and financial responsibility program as required by the federal Resource Conservation and Recovery Act of 1976 and the Energy Policy Act of 2005, Pub. L. No. 109-58; and

(2)(A) To set reasonable fees for licensure of individuals and annual registration of underground storage tanks and aboveground storage tanks by rule or regulation.

(B)(i) The annual registration fee for underground storage tanks shall not exceed seventy-five dollars (\$75.00) per tank.

(ii) The fee shall be used by the Arkansas Department of Environmental Quality for administrative and program costs.

(C)(i) The annual registration fee for aboveground storage tanks shall not exceed seventy-five dollars (\$75.00) per tank.

(ii) The fee shall be used by the Arkansas Department of Environmental Quality for administrative and program costs, and ten dollars (\$10.00) of the fee collected by the Arkansas Department of Environmental Quality shall be remitted to the State Treasury, there to be deposited as special revenues to the credit of the Department of Arkansas State Police Fund to be used for the purposes of aboveground storage tank monitoring and regulation by the Department of Arkansas State Police.

(b) The Arkansas Department of Environmental Quality shall have the following powers and duties:

(1) To administer and enforce all laws, rules, and regulations relating to an underground storage tank release detection, prevention, and corrective action program, and financial responsibility, including the use of any and all appropriate legal remedies, to recover costs and collect penalties under this subchapter;

(2) To advise, consult, cooperate, and enter into agreements with appropriate federal, state, interstate, and local units of government and with affected groups and industries in the formulation of plans and in implementation of a program pursuant to this subchapter;

(3) To accept and administer loans and grants from the federal government and from such other sources as may be available to the Arkansas Department of Environmental Quality for the planning, implementation, and enforcement of an underground storage tank program for release detection, prevention, corrective action, and financial responsibility;



(4) To examine and license individuals for the installation and testing of underground storage tanks;

(5) To enter upon any public or private property for the purpose of obtaining information, conducting surveys or investigations, or taking corrective action, and the Arkansas Department of Environmental Quality may copy or require submission of books, papers, records, memoranda, or data pertaining to the management of underground storage tanks;

(6) To enter into a cooperative agreement with the United States Environmental Protection Agency to carry out corrective actions and enforcement activities, including use of funds provided from the federal Leaking Underground Storage Tank Trust Fund; and

(7) To take such other action as necessary and appropriate to carry out the purposes of this subchapter and meet the requirements of federal law.

**History.** Acts 1989, No. 172, § 2; 1991, No. 594, § 1; 1993, No. 810, § 2; 2005, No. 671, § 1; 2007, No. 264, § 2.

**Amendments.** The 2007 amendment inserted “and the Energy Policy Act of 2005, Pub. L. No. 109-58” in (a)(1).

**U.S. Code.** The Resource Conservation and Recovery Act of 1976, referred to in this section, is codified as 42 U.S.C. § 6901 et seq.

### **8-7-803. Regulations generally.**

Any regulations promulgated under this subchapter shall as much as possible be identical to and no more stringent than the federal regulations adopted by the United States Environmental Protection Agency.

**History.** Acts 1989, No. 172, § 3.

### **8-7-804. Procedures of department generally.**

The procedure of the Arkansas Department of Environmental Quality and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229, including, but not limited to, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229 to the extent they are not in conflict with the provisions of this subchapter.

**History.** Acts 1989, No. 172, § 4; 1993, No. 810, § 3.

### **8-7-805. License requirement.**

(a) It shall be unlawful for an individual to certify the installation or testing of an underground storage tank unless the individual has been duly licensed by the Arkansas Department of Environmental Quality.

(b)(1) Furthermore, no licensee shall install, remove, repair, close, upgrade, or test any underground storage tank unless the licensee or the contracting company by whom he or she is employed has purchased a surety bond, letter of credit, or cash bond:

(A) In the amount of at least twenty-five thousand dollars (\$25,000); and

(B) Which provides that the department is the obligee or payee of the instrument and otherwise complies with the regulations promulgated under this subchapter.

(2) The surety bond shall be issued by a company authorized to do business in the State of Arkansas and executed by an Arkansas agent.

(c) Licensees whose installation or testing activities are limited to their own or their employers' companies' underground storage tanks are exempt from the requirement to meet the financial responsibility requirements provided by this section.

(d) In the event the licensee or contracting company fails to properly install, remove, repair, close, upgrade, or test any underground storage tank pursuant to state law or regulation, the Director of the Arkansas Department of Environmental Quality shall commence proceedings to collect on the surety bond, letter of credit, or cash bond on which the department is the obligee or payee.

**History.** Acts 1989, No. 172, § 5; 1991, No. 601, § 1; 1999, No. 1164, § 106; 2003, No. 1186, § 1; 1993, No. 1019, § 1; 1999, No. 1203, § 1; 2005, No. 193, §§ 1, 2.

## **8-7-806. Penalties.**

(a) It shall be unlawful for any person:

(1) To violate any provision of this subchapter or any rule or regulation adopted under this subchapter;

(2) To knowingly make a false statement, representation, or certification in any report or other document submitted under or required by this subchapter or the Petroleum Storage Tank Trust Fund Act, § 8-7-901 et seq., or any rule or regulation issued pursuant thereto; or

(3) To violate any order issued by the Arkansas Department of Environmental Quality under this subchapter or any provision of any such order.

(b) Any person who knowingly makes a false statement, representation, or certification as described in subdivision (a)(2) of this section shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each such violation.

(c) Any owner or operator who fails to give any notification regarding storage tanks required by this subchapter or any regulation issued pursuant to this subchapter shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) for each storage tank for which notification is not given.

(d)(1) Any person who violates any provision of this subchapter or of any rule, regulation, permit, certification, license, plan, or order issued pursuant thereto or who commits an unlawful act hereunder may be

assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation or unlawful act.

(2) Each day of a continuing violation or unlawful act may be deemed a separate violation or unlawful act for purposes of penalty assessment.

(3) If the violation or unlawful act concerns the operation of an underground storage tank, the penalty shall not exceed ten thousand dollars (\$10,000) for each tank for each day of violation or unlawful action.

(4) No civil penalty may be assessed until the person charged with the violation or unlawful act has been given the opportunity for a hearing in accordance with regulations adopted by the Arkansas Pollution Control and Ecology Commission.

(5) The administrative procedures set forth in § 8-7-804 may be used to recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages.

(e) The department is authorized to institute a civil action in any court of competent jurisdiction to accomplish any or all of the following:

(1) Restrain any violation of or compel compliance with the provisions of this subchapter or of any rule, regulation, permit, certification, license, plan, or order issued pursuant to this subchapter or restrain the commission of any unlawful act under this section;

(2) Affirmatively order that remedial measures be taken as may be necessary or appropriate to implement or effectuate the purposes and intent of this subchapter;

(3) Recover all costs, expenses, and damages to the department and any other agency or subdivision of the state in enforcing or effectuating the provisions of this subchapter, including, but not limited to, natural resource damages;

(4) Assess civil penalties in an amount not to exceed ten thousand dollars (\$10,000) per day for violations of this subchapter or of any rule, regulation, permit, certification, license, plan, or order issued pursuant to this subchapter or for any unlawful act under this section;

(5) Recover civil penalties assessed pursuant to subsection (d) of this section; or

(6) Forfeit a surety bond purchased pursuant to this subchapter.

(f)(1) All civil penalties collected under this section shall be deposited in the Regulated Substance Storage Tank Program Fund.

(2) All moneys collected which represent the costs, expenses, or damages of another agency or subdivision of the state shall be distributed to the appropriate governmental entity.

**History.** Acts 1989, No. 172, § 6; 1993, No. 810, § 4; 2003, No. 486, § 1.



**8-7-807. Responsibility and liability of owner.**

(a)(1) Upon a determination that a release of a regulated substance from a storage tank has occurred, the owner or operator shall notify the Arkansas Department of Environmental Quality. The owner or operator shall immediately undertake to collect and remove the release and to restore the area affected in accordance with the requirements of this subchapter.

(2) However, the obligation of an owner or operator of an above-ground storage tank to notify the department or undertake the other activities required in this subsection shall not exceed and will be limited to the existing requirements of any other applicable federal or state statutes or regulations.

(b) If the owner or operator fails to proceed as required in subsection (a) of this section, the owner and operator shall be liable to the department for any costs incurred by the department for undertaking corrective action or enforcement action with respect to the release of a regulated substance from a storage tank.

(c)(1) No adjacent property owner shall unduly impede or interfere with any efforts of the department or the owner or operator to undertake investigation, site assessment, or corrective action in accordance with the requirements of this subchapter.

(2)(A) Any adjacent property owner violating subdivision (c)(1) of this section shall be liable for any investigation, site assessment, or corrective action costs resulting from such violation.

(B) If the adjacent property owner denies access to property when such access is reasonably necessary for investigation, site assessment, or corrective action undertaken by the department or by the owner or operator under a department directive, order, or approved corrective action plan, the department may order the adjacent property owner to undertake the portion of investigation, site assessment, or corrective action which was prohibited by the denial of access.

(d)(1) Any party found liable for any costs or expenditures recoverable under this subchapter which establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for that portion.

(2) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures, the court shall apportion the costs or expenditures, to the extent practicable, according to equitable principles, among the responsible parties.

(3) In any action under this subchapter, no responsible party shall be liable for more than that party's apportioned share of the amount of costs or expenditures recoverable for the site.

(4) Any expenditures required under this subchapter made by a responsible party, before or after suit or before or after a complaint has been filed with or heard by the Arkansas State Claims Commission, shall be credited toward any apportioned share.

(e) Any costs recovered by the department under this section shall be used to reimburse the Petroleum Storage Tank Trust Fund in the amount utilized by the department and the balance, if any, deposited into the Regulated Substance Storage Tank Program Fund.

**History.** Acts 1989, No. 172, § 7; 1993, No. 810, § 5; 1999, No. 600, § 2.

## RESEARCH REFERENCES

**Ark. L. Rev.** Recent Developments, Remedies — Restoration Costs, 57 Ark. L. Rev. 697.

## CASE NOTES

### Exhaustion of Administrative Remedies.

Landowners did not bypass any administrative remedy when they sought monetary damages for additional cleanup costs over and above the corrective-action plan approved and implemented by the

Arkansas Department of Environmental Quality; when a plaintiff prays for relief in litigation that is clearly not available at the administrative level, exhaustion of other available administrative remedies is not required. *Felton Oil Co., L.L.C. v. Gee*, 357 Ark. 421, 182 S.W.3d 72 (2004).

### 8-7-808. Regulated Substance Storage Tank Program Fund.

There is hereby established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the “Regulated Substance Storage Tank Program Fund”. Such Regulated Substance Storage Tank Program Fund shall consist of federal funds, any necessary state matching funds as may be provided by the General Assembly, licensure fees, annual registration fees, and any moneys recovered by the Arkansas Department of Environmental Quality which are attributable to collections of civil penalties under § 8-7-806 or to costs under § 8-7-807 not owed the Petroleum Storage Tank Trust Fund. All said moneys shall be deposited as special revenues to be used in the administration of this subchapter.

**History.** Acts 1989, No. 172, § 8.

### 8-7-809. Corrective actions — Orders of director.

(a) Nothing in this subchapter or the regulations promulgated under this subchapter shall prevent any person from undertaking corrective action which would provide reasonable protection of public health and safety and the environment.

(b)(1) Notwithstanding any other provisions of this subchapter, the Director of the Arkansas Department of Environmental Quality, upon finding that the release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment may, without notice or hearing,

issue an order reciting the existence of such an imminent hazard and emergency and requiring that such action be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(2) The order of the director may include, but is not limited to, directing the owner or operator of the site which constitutes the hazard to take such steps as are necessary to prevent the act or eliminate the practice which constitutes the hazard, and, with respect to a facility or site, the director may order cessation of operation.

(3) Any person to whom the order is directed shall comply with it immediately, but, upon written application to the director within ten (10) days of the issuance of the order, that person shall be afforded a hearing before the Arkansas Pollution Control and Ecology Commission within ten (10) days after receipt of the written request.

(4) On the basis of the hearing, the commission shall continue the order in effect or shall revoke or modify it.

**History.** Acts 1989, No. 172, § 9; 1993, No. 810, § 6.

### **8-7-810. Insurance pools.**

(a) Owners or operators of storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified by the Arkansas Department of Environmental Quality may establish an insurance pool in order to demonstrate such financial responsibility.

(b)(1) The formation and operation of an insurance pool under this section shall be subject to approval by the Insurance Commissioner, who shall, after notice and hearing, establish through rules and regulations a method for approval and monitoring of such pools.

(2) Such regulations may include:

(A) Provisions for periodic examinations of financial condition, including inspection of books, papers, accounts, and affairs of the plan;

(B) Conditions for participation in the plan;

(C) Minimum amounts of cash reserves and insurance coverage to be acquired;

(D) Requirements for sound management of the plan;

(E) Grounds for suspension or withdrawal of approval of the plan; and

(F) Grounds for termination of the plan.

**History.** Acts 1989, No. 172, § 10.

### **8-7-811. Trade secrets.**

(a) Any records, reports, or information obtained by the Arkansas Department of Environmental Quality or its employees in the administration of this subchapter, except release data, shall be kept confidential upon a showing satisfactory to the Director of the Arkansas



Department of Environmental Quality that the records, reports, or information would constitute a trade secret under § 4-75-601 et seq.

(b) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(c) The provisions of this section shall not be construed to limit the department's authority to release confidential information during emergency situations.

(d) Any violation of this section shall be unlawful and shall constitute a misdemeanor.

**History.** Acts 1989, No. 172, § 11; 1993, No. 810, § 7.

### **8-7-812. Subchapter controlling over other laws.**

(a) This subchapter shall supersede and preempt all local government laws, ordinances, and regulations pertaining to underground storage tanks, except for any applicable local building permit or fire code requirements pertaining to installation of underground tanks.

(b) The provisions of this subchapter and the rules and regulations promulgated pursuant to it shall govern if they conflict with the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., the Arkansas Solid Waste Management Act, § 8-6-201 et seq., or the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., or any action taken by the Arkansas Department of Environmental Quality under those laws.

**History.** Acts 1989, No. 172, § 12.

### **CASE NOTES**

#### **Applicability.**

Pursuant to this section, where the Arkansas Solid Waste Management Act, § 8-6-201 et seq., provides a remedy, that remedy does not conflict with the Regulated Substance Storage Tank Law, § 8-7-801 et seq., because such a remedy would be in addition to, not in conflict with, the

regulations found in the storage tank law; the storage tank law does not provide the exclusive remedy for storage tanks leaks and does not supersede the Solid Waste Management Act absent a conflict. *Patton v. TPI Petroleum, Inc.*, 356 F. Supp. 2d 921 (E.D. Ark. 2005).

### **8-7-813. Registration.**

(a) All owners and operators of storage tanks must register their tanks as required by federal regulations and in accordance with the regulations adopted hereunder.

(b)(1) All owners and operators must maintain proof of current and proper registration at the registered facility and post the proof in a conspicuous place on-site.

(2) Proof of registration shall be in the form determined by regulations adopted hereunder.

(c)(1) No owner or operator shall receive any regulated substance into any storage tank for which current and proper proof of registration has not been provided to the person selling the regulated substance.

(2) Neither shall any person selling any regulated substance deliver or cause to be delivered a regulated substance into any storage tank for which he or she has not obtained current and proper proof of registration from the owner or operator.

(d) Any person violating any provision of this section shall be subject to the provisions of § 8-7-806.

(e) The provisions of this subchapter shall not apply to aboveground storage tanks located on farms, the contents of which are used for agricultural purposes and not held for resale.

**History.** Acts 1993, No. 810, § 8.

#### **8-7-814. Delivery prohibition.**

(a) It shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility that has been identified by the Arkansas Department of Environmental Quality to be ineligible for fuel delivery or deposit.

(b) The Arkansas Pollution Control and Ecology Commission shall adopt regulations to implement the criteria and process required by the delivery prohibition requirements of the Energy Policy Act of 2005, Pub. L. No. 109-58, and the regulations shall consist of, at a minimum, the federal guidelines for determining the significant operational compliance of underground storage tank systems.

(c) In order to prevent the delivery of a regulated substance into an underground storage tank system that has been identified by the department to be ineligible for fuel delivery or deposit, the department shall affix a tamper-proof tag, seal, or other device blocking the fill pipes of the ineligible underground storage tank. This affixed notice shall serve as written notification to the owner, the operator, and the product delivery industry.

(d) No owner or operator shall receive any regulated substance into any underground storage tank to which notification of delivery prohibition has been affixed.

(e) No person selling any regulated substance shall deliver or cause to be delivered a regulated substance into any underground storage tank to which notification of delivery prohibition has been affixed.

(f) It shall be unlawful for any person, other than an authorized representative of the department, to remove, tamper with, destroy, or damage a device affixed to any underground storage tank by department personnel.

(g) Any person violating any provision of this section shall be subject to an assessment of an administrative civil penalty as set forth in this subchapter.

**History.** Acts 1999, No. 505, § 1; 2007, No. 264, § 3. substituted “Delivery prohibition” for “Upgrade compliance” in the section heading, and rewrote the section.

**Amendments.** The 2007 amendment

### 8-7-815. [Repealed.]

**Publisher’s Notes.** This section, concerning storage tank self-inspection audit, was repealed by Acts 2009, No. 282, § 2. The section was derived from Acts 2001, No. 1471, § 2.

### 8-7-816. Secondary containment.

(a)(1) Each new underground storage tank or piping connected to any new underground storage tank installed after July 1, 2007, shall be secondarily contained and monitored for leaks if the new underground storage tank or piping is within one thousand feet (1,000’) of any existing community water system or any existing potable drinking water well.

(2) In the case of a new underground storage tank system consisting of one (1) or more underground storage tanks and connected by piping, the requirement to provide secondary containment shall apply to all underground storage tanks and connected pipes comprising such system.

(b)(1) Any existing underground storage tank or existing piping connected to such existing underground storage tank that is replaced after July 1, 2007, shall be secondarily contained and monitored for leaks if the replaced underground storage tank or piping is within one thousand feet (1,000’) of any existing community water system or any existing potable drinking water well.

(2) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, the requirement to provide secondary containment shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(3) With respect to piping, “replace” means to remove and put back in more than five feet (5’) of piping associated with a single underground storage tank.

(c)(1) Each installation of a new motor fuel dispenser system or replacement of an existing motor fuel dispenser system after July 1, 2007, shall include under-dispenser spill containment if the new or replaced dispenser is within one thousand feet (1,000’) of any existing community water system or any existing potable drinking water well.

(2) A motor fuel dispenser system is considered to have been replaced when an existing motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank



system are removed and another motor fuel dispenser and the equipment necessary to connect the motor fuel dispenser to the underground storage tank system are put in its place.

(d) All secondary containment installed shall comply with federal regulations for underground storage tanks and the regulations adopted under this subchapter.

(e) Any person violating any provision of this section shall be subject to the provisions of § 8-7-806.

**History.** Acts 2007, No. 264, § 4.

### 8-7-817. Operator training.

(a) All operators of underground storage tank systems shall complete training in the operation and maintenance of underground storage tank systems in accordance with regulations promulgated under this section.

(b) For purposes of compliance with this section, the following persons shall be considered “operators” required to receive operator training:

(1) Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(2) Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems; and

(3) Daily on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

**History.** Acts 2007, No. 264, § 5.

## SUBCHAPTER 9 — PETROLEUM STORAGE TANK TRUST FUND ACT

### SECTION.

8-7-901. Title.

8-7-902. Definitions.

8-7-903. Rules and regulations — Powers of department.

8-7-904. Advisory committee.

8-7-905. Petroleum Storage Tank Trust Fund.

### SECTION.

8-7-906. Petroleum environmental assurance fee.

8-7-907. Payments for corrective action.

8-7-908. Third-party claims.

8-7-909. Confidential treatment of information.

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**A.C.R.C. Notes.** Acts 1989, No. 173, § 10, provided: “If any provision of this act is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act.”

**Publisher’s Notes.** Acts 1991, No. 219,

§ 9, provided: “Provided, nothing in this act shall be construed to amend, abrogate, modify, or repeal any of the provisions of the ‘Petroleum Storage Tank Trust Fund Act’, Arkansas Code § 8-7-901 et seq., and the fees levied by that act on each gallon of motor fuel or distillate special fuels shall continue to be collected as provided by those Code sections in addition to all taxes and fees imposed by other sections of the Code on such fuel or fuels as well as those

additional taxes and fees imposed by this act."

Acts 1991, No. 219 is codified as §§ 26-56-201, 26-56-222, 27-14-601 and 27-35-210. Acts 1991, No. 219 also repealed §§ 27-35-204, 27-35-205 and 27-35-212.

Identical Acts 1991, Nos. 364 and 382, § 6, provided: "Provided, nothing in this act shall be construed to amend, abrogate, modify, or repeal any of the provisions of the 'Petroleum Storage Tank Trust Fund Act,' Arkansas Code § 8-7-901 et seq., and all fees on each gallon of motor fuel or distillate special fuels shall continue to be collected as provided by those code sections in addition to all taxes and fees imposed by other sections of the code on such fuel or fuels as well as those additional taxes and fees imposed by this act."

**Effective Dates.** Acts 1989, No. 173, § 13: Feb. 22, 1989, except § 4: effective July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that a fund be established for corrective action and compensation to third parties to maintain the environment and protect the public health, welfare and safety; that for immediate funds to begin accumulating in this fund, under section 4 of this act, it is necessary for section 4 to become effective July 1, 1989 and all other provisions to become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with section 4 of this act to become effective July 1, 1989."

Acts 1989 (3rd Ex. Sess.), No. 65, § 16: Nov. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that underground storage tank insurance is not readily available to cover the deductibles or upper-level third party damage claims; therefore, the relevant provisions must be changed, and this Act should be given effect immediately in order to relieve the burden as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1054, § 7: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to provide an additional method for financing the remediation costs and costs of compensating tank owners or operators for third-party claims from the Petroleum Storage Tank Trust Fund. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1018, § 8: Apr. 2, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas Code 25-16-903 authorized members of the Advisory Committee on Petroleum Storage Tanks and members of the State Marketing Board of Recyclables to receive a stipend for attending board meetings; that Arkansas Code 8-7-904 and 8-9-201 were enacted prior to Arkansas Code 25-16-903 and do not mention stipends; that the earlier code sections should be amended to parallel the authority granted in § 25-16-903; that this act makes those technical corrections; and that this act should go into effect as soon as possible in order to avoid confusion. It is further found and determined by the General As-



sembly that the current law concerning expense reimbursement for the State Board of Collection Agencies does not conform to Arkansas Code 25-16-901 et seq.; the State Board of Collection Agencies should be allowed to receive a stipend; and that this act is immediately necessary for the effective operation of the State Board of Collection Agencies. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1027, § 8: Apr. 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the expansion of the fund to include undiscovered petroleum storage tanks for which fees have not been paid is necessary to ensure that owners or operators search for such tanks and perform necessary investigations or corrective action. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1354, § 51: Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of

its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1471, § 6: Apr. 10, 2001. Emergency clause provided: "It is hereby found and determined by the 83rd General Assembly that under present law a requirement for Petroleum Storage Tank Trust Fund eligibility is substantial compliance with applicable federal and state requirements. This eligibility requirement poses two significant problems. First, a storage tank owner or operator found ineligible for the Petroleum Storage Tank Trust Fund reimbursement is in reality penalized tens of thousands of dollars that are typically expended on investigation and/or remediation of petroleum releases. Second, the difficulty specifying the type of conduct that constitutes substantial compliance generates uncertainty as to whether the Petroleum Storage Tank Trust Fund will be available to owners or operators of such equipment. Consequently, it has been determined that instead of judging trust fund eligibility on



the basis of substantial compliance, requiring owners and operators of storage tanks to annually complete and submit to the department self-inspection audits will better enhance environmental protection. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 1114, § 7: Apr. 7, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that under present law a requirement for Petroleum Storage Tank Fund eligibility for reimbursement for third party claims for bodily injury and property damage is the payment of seven thousand five hundred dol-

lars (\$7,500) to injured third parties by the owner or operator; that if the owner or operator is discharged in bankruptcy or declared insolvent, injured third parties may have no protection under the law; that existing law should be changed immediately so that injured third parties will be guaranteed access to the fund that is specifically designed to compensate them for their injuries; and that, in addition, owners or operators may not enjoy the protection originally intended by the General Assembly when it initially enacted this statute unless the definition of compensatory damages is clarified. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey, Water and Environmental Law, 12 U. Ark. Little Rock L.J. 665.

Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Pro-

tecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

### 8-7-901. Title.

This subchapter may be known and may be cited as the "Petroleum Storage Tank Trust Fund Act".

**History.** Acts 1989, No. 173, § 1.

### 8-7-902. Definitions.

As used in this subchapter:

(1)(A) "Aboveground storage tank" means any one (1) or a combination of containers, vessels, and enclosures located aboveground, including structures and appurtenances connected to them, the capacity of which is greater than one thousand three hundred twenty gallons (1,320 gals.) and not more than forty thousand gallons (40,000 gals.) and that is used to contain or dispense motor fuels, distillate special fuels, or other refined petroleum products.

(B) The term “aboveground storage tank” does not include mobile storage tanks used to transport petroleum from one (1) location to another or those used in the production of petroleum or natural gas;

(2) “Accidental release” means any sudden or nonsudden confirmed release of petroleum from a storage tank that results in a need for corrective action or a claim for compensatory damages, or both, neither expected nor intended by the tank owner or operator;

(3) “Advisory committee” or “committee” means the Advisory Committee on Petroleum Storage Tanks as established in this subchapter;

(4) “Commission” means the Arkansas Pollution Control and Ecology Commission;

(5)(A) “Compensatory damages” means all damages for which an owner or operator may be liable, including, without limitation, bodily injury or property damage.

(B) “Compensatory damages” do not include:

(i) Punitive damages; or

(ii) The costs of litigation, which shall not be limited to attorney or expert witness fees.

(C) This definition shall apply to any pending third-party claim which has not been reduced to judgment as of April 7, 2003;

(6) “Corrective action” means those actions which may be necessary to protect human health and the environment as a result of an accidental release, sudden or nonsudden;

(7) “Department” means the Arkansas Department of Environmental Quality;

(8) “Director” means the Director of the Arkansas Department of Environmental Quality;

(9) “Distributor” means and includes any person, including the State of Arkansas and any political subdivision thereof, but not including the United States of America or any of its instrumentalities, except to the extent permitted by the Constitution or laws thereof, who is customarily in the wholesale business of offering motor fuels for resale or delivery to dealers, consumers, or others in tanks of two hundred gallons (200 gals.) or more which are not connected to motor vehicles and is:

(A) Making the first sale in the State of Arkansas of any motor fuel imported into the state from any other state, territory, or foreign country after it has been received within this state within the meaning of § 26-55-201 et seq.;

(B) Consuming or using in the State of Arkansas any motor fuel so imported and who has purchased it before it has been received by any other person in this state, within the meaning of § 26-55-201 et seq.; or

(C) Producing, refining, preparing, distilling, manufacturing, blending, or compounding motor fuel in this state;

(10) “Fund” means the Petroleum Storage Tank Trust Fund created by this subchapter;

(11) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank;

(12) "Owner or operator", when the owner and operator are separate parties, means the person who is required to obtain financial assurances under the state or federal underground storage tank program;

(13) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, or venture, or municipal, state, or federal government or agency, or any other legal entity, however organized;

(14) "Petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure of sixty degrees Fahrenheit (60° F) and fourteen and seven-tenths pounds per square inch (14.7 psi) absolute;

(15)(A) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a storage tank into groundwater, surface water, or subsurface soils.

(B) The term "release" does not include releases that are permitted or authorized by the department or by federal law;

(16) "Storage tank" means an aboveground storage tank or underground storage tank as defined in this subchapter;

(17)(A) "Supplier" means any person who is customarily in the wholesale business of offering distillate special fuels or liquefied gas special fuels for resale or use to any person in this state and who makes bulk sales of fuel.

(B) The term "supplier" shall include pipeline importers, first receivers, and second receivers;

(18) "Terminal" means a bulk storage facility for storing petroleum products supplied by pipeline or marine vessels;

(19)(A) "Underground storage tank" means any one (1) or a combination of tanks, including underground pipes connected thereto, that is or has been used to contain petroleum, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.

(B) The term "underground storage tank" does not include any:

(i) Farm or residential tank of one thousand one hundred gallons (1,100 gals.) or less capacity used for storing motor fuel for noncommercial purposes;

(ii) Tank used for storing heating oil for consumptive use on the premises where stored;

(iii) Septic tank;

(iv) Intrastate and interstate pipeline facilities regulated by the Arkansas Public Service Commission or other applicable state or federal agency and all other pipeline facilities, including gathering lines regulated under:

(a) The Natural Gas Pipeline Safety Act of 1968; or

(b) The Hazardous Liquid Pipeline Safety Act of 1979;

(v) Surface impoundment, pit, pond, or lagoon;



- (vi) Storm water or wastewater collection system;
- (vii) Flow-through process tank;
- (viii) Liquid trap or associated gather lines directly related to oil or gas production and gathering operations;
- (ix) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or
- (x) Any pipes connected to any tank which is described in this subdivision (19)(B); and

(20)(A) “Unknown petroleum storage tank” means a petroleum storage tank as defined by this subchapter whose existence on a property or facility at the time of the discovery of a release was not known or should not have reasonably been known by the owner or operator.

(B) An owner or operator is deemed to have known of the existence of an unknown petroleum storage tank if there was surficial evidence of such a tank in the form of visible vent pipes, fill caps, or lines protruding from the tank.

**History.** Acts 1989, No. 173, § 2; 1989 (3rd Ex. Sess.), No. 65, §§ 1, 2; 1991, No. 616, § 1; 1993, No. 951, § 1; 1997, No. 641, § 1; 1997, No. 1027, §§ 3, 4; 1999, No. 1164, § 107; 2001, No. 1471, § 3; 2003, No. 1114, § 1; 2009, No. 282, § 3.

**Amendments.** The 2009 amendment deleted (17), which defined “storage tank self-inspection audit,” redesignated the subsequent subdivisions accordingly, and

substituted “(19)” for “(20)” in (19)(B)(iv)(x).

**U.S. Code.** The Natural Gas Pipeline Safety Act of 1968, referred to in this section, is codified as 49 U.S.C. App. § 1671 et seq.

The Hazardous Liquid Pipeline Safety Act of 1979, referred to in this section, is codified as 49 U.S.C. App. § 60101 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

## 8-7-903. Rules and regulations — Powers of department.

(a) The Director of the Department of Finance and Administration is authorized to adopt appropriate rules and regulations not inconsistent with this subchapter as he or she may deem necessary to carry out the intent and purposes of and to assure compliance with this subchapter.

(b) The Arkansas Pollution Control and Ecology Commission is authorized to adopt appropriate rules and regulations not inconsistent with this subchapter to carry out the intent and purposes of and to assure compliance with this subchapter.

(c) The department shall have the authority to enter upon the property of any owner or operator of an aboveground storage tank to obtain information, conduct surveys, or review records for the purpose of determining substantial compliance, as defined by this subchapter and regulations promulgated thereunder, with all state and federal

laws and regulations relating to aboveground storage tanks prior to the director's approval of a claim for reimbursement or disbursement.

**History.** Acts 1989, No. 173, § 5; 1989 (3rd Ex. Sess.), No. 65, § 7; 1993, No. 951, § 2; 1997, No. 641, § 2.

### **8-7-904. Advisory committee.**

(a)(1) There is established an Advisory Committee on Petroleum Storage Tanks to be composed of the following members:

(A) A representative from the property and casualty segment of the insurance industry;

(B) A representative from a company that is a refiner and also has service stations or other motor fuel retail outlets in the state;

(C) A representative from a company that is a jobber or wholesaler of petroleum products in the state;

(D) An independent retail service station dealer;

(E) The State Fire Marshal or his or her designee;

(F) A representative from a company that installs or repairs petroleum storage tanks; and

(G) A representative from a company that has one (1) or more employees with knowledge and expertise regarding environmental protection and management matters.

(2) The Governor shall appoint the members of the advisory committee:

(A) The member appointed under subdivision (a)(1)(B) of this section shall be from a list of three (3) names submitted by the Arkansas Petroleum Council;

(B) The member appointed under subdivision (a)(1)(C) of this section shall be from a list of three (3) names submitted by the Arkansas Oil Marketers Association;

(C) The member appointed under subdivision (a)(1)(D) of this section shall be from a list of three (3) names submitted by the Service Station Dealers of Arkansas; and

(D) The member appointed under subdivision (a)(1)(G) of this section shall be from a list of three (3) names submitted by the Arkansas Environmental Federation.

(3) Each member of the committee shall serve a four-year term and until a successor has been appointed.

(4) Any vacancies shall be filled by the Governor to serve the remainder of the term.

(b) Committee members shall serve without compensation but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c) The committee shall select a member to serve as chairman each year.

(d) The committee shall meet as necessary to carry out its duties under this subchapter and at the call of the chair.

(e) The Arkansas Department of Environmental Quality shall provide adequate staff to support the activities of the committee.

(f) The committee shall adopt all rules and regulations necessary to conduct its business.

(g) The committee shall advise and make recommendations to the Director of the Arkansas Department of Environmental Quality regarding claims for payment under this subchapter.

(h) The committee shall advise the department and the Arkansas Pollution Control and Ecology Commission regarding promulgation of rules and regulations concerning storage tanks.

(i) No member of the committee shall participate in any decision on any claim in which the firm or organization by which that member is employed or in which that member has a direct or indirect financial interest is involved.

**History.** Acts 1989, No. 173, § 6; 1993, No. 1018, § 1; 1997, No. 1354, § 9; 1999, No. 951, § 3; 1997, No. 250, § 49; 1997, No. 1508, §§ 2, 7.

### **8-7-905. Petroleum Storage Tank Trust Fund.**

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Petroleum Storage Tank Trust Fund", hereinafter referred to as the "fund".

(b) The fund will be administered by the Director of the Arkansas Department of Environmental Quality, who shall make disbursements from the fund as authorized by this subchapter.

(c) The fund shall consist of gifts, grants, donations, and such other funds as may be made available by the General Assembly, including all interest earned upon money deposited in the fund, fees assessed under this subchapter, any moneys recovered by the Arkansas Department of Environmental Quality, the proceeds of bonds issued by the Arkansas Development Finance Authority for the benefit of the fund, and any other moneys legally designated for the fund.

(d) Moneys in the fund may be expended by the director solely for the following purposes, as limited by the provisions of subsection (e) of this section:

(1) The state share mandated by the federal Resource Conservation and Recovery Act of 1976;

(2) To pay costs incurred by the Arkansas Pollution Control and Ecology Commission, the director, the Attorney General, or the Advisory Committee on Petroleum Storage Tanks in the performance of their duties under this subchapter;

(3) To pay reimbursement to owners and operators for taking corrective action or to pay third parties for compensatory damages caused by accidental releases from qualified storage tanks;

(4) To pay reasonable and necessary costs and expenses of the department for taking corrective action caused by accidental releases from a storage tank of unknown ownership or when corrective action is not commenced by the owner or operator in a timely manner; and



(5)(A) To reimburse owners and operators in the vicinity of the release for performing short-term testing or monitoring which is in addition to that required by the department's rules and regulations if the department has a reasonable basis for believing that the petroleum underground storage tank or tanks may be the source of the release.

(B) The owners and operators of petroleum underground storage tanks, including out-of-service and nonoperational tanks, not found to be the source of the release and who cooperate with the department may apply to the fund for reimbursement for such testing and monitoring costs, not including lost managerial time or loss of revenues because of temporary business closure.

(e) Notwithstanding any other provisions of this subchapter, the director, upon finding that a release may present an imminent and substantial hazard to the health of persons or to the environment and that an emergency exists requiring immediate action to protect the public health and welfare or the environment, may, without receiving prior advice from the committee, issue an order reciting the existence of such an imminent hazard and emergency and ordering a disbursement or reimbursement of up to fifty thousand dollars (\$50,000) from the fund so that such action may be taken as he or she determines to be necessary to protect the health of such persons or the environment and to meet the emergency.

(f)(1) No expenditure from the fund shall be made for expenses for retrofitting or replacement of petroleum storage tanks.

(2) No expenditure from the fund pursuant to subdivisions (d)(3) and (5) of this section shall be made for attorney's fees.

(g) The liability or obligation of the fund is not the liability or obligation of the State of Arkansas. However, this subsection shall not be construed as relieving the fund of any liability or obligation prescribed in this subchapter upon the entry of a valid court order or valid final order of the Arkansas State Claims Commission establishing a judgment against any state agency, board, department, or commission or where a settlement agreement has been reached arising from third-party claims against any state agency, board, department, or commission where the state agency, board, department, or commission is determined to be the owner or operator.

(h) Nothing in this subchapter shall be construed to abrogate or waive the provisions of Arkansas Constitution, Article 5, § 20.

(i)(1) An owner or operator who considers himself or herself injured in his or her business, person, or property by a final decision of the director or the director's delegatee under this subchapter may appeal the decision to the Arkansas Pollution Control and Ecology Commission within thirty (30) days after the date of the final decision of the director or the director's delegatee.

(2) The procedures of the department and the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, right of appeal, pre-

sumptions, finality of actions, and related matters shall be as provided in §§ 8-4-202, 8-4-210 — 8-4-214, and 8-4-218 — 8-4-229, and in rules and regulations applicable to administrative procedures of the department and the Arkansas Pollution Control and Ecology Commission to the extent they are not in conflict with the provisions of this subchapter.

**History.** Acts 1989, No. 173, § 3; 1989 (3rd Ex. Sess.), No. 65, §§ 3, 4; 1991, No. 615, § 1; 1993, No. 951, § 4; 1995, No. 1054, § 2; 1997, No. 641, § 3; 2001, No. 206, § 1; 2003, No. 1114, § 2.

**U.S. Code.** The Resource Conservation and Recovery Act of 1976, referred to in this section, is codified as 42 U.S.C. § 6901 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Environmental Law, 24 U. Ark. Legislation, 2001 Arkansas General As- Little Rock L. Rev. 475.

### 8-7-906. Petroleum environmental assurance fee.

(a) There is established a petroleum environmental assurance fee to be paid, except as provided in subsection (c) of this section, on each gallon of motor fuel or distillate special fuel purchased in or imported into this state.

(b) The fee shall be paid by the first distributor or supplier receiving fuel from a terminal in this state, or, if the fuel will never be stored in a terminal in this state, then by the distributor or supplier who first imports fuel into this state by tank truck.

(c) Exchanges of fuels on a gallon-for-gallon basis within a terminal or fuels exported from this state are exempt from the fee.

(d) Proof of payment shall be provided to the owner or operator.

(e) The fee shall be remitted to the Director of the Department of Finance and Administration at the time, in the manner, and on forms prescribed by the director and may be collected and remitted at the same time and in the same manner as the motor fuels tax and special motor fuels tax under § 26-55-101 et seq. and the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(f)(1) For so long as no bonds for the benefit of the Petroleum Storage Tank Trust Fund are issued and outstanding, the fees collected under this subchapter shall be deposited into the fund.

(2) The applicable fund balances shall be required to be maintained in perpetuity.

(g)(1) The maximum rate for the fee shall be at a rate of three-tenths of one cent (0.3¢) for each gallon of fuel.

(2)(A) For so long as no bonds for the benefit of the fund are outstanding, the fee shall be collected at the maximum rate. However, when the balance of the fund, as adjusted to reflect the obligations and liabilities of the fund, reaches fifteen million dollars (\$15,000,000), the rate shall drop at the beginning of the next calendar quarter to such rate as the Arkansas Pollution Control and Ecology Commission determines is necessary to maintain a fifteen million dollar (\$15,000,000) adjusted balance.

(B) The rate shall be increased at the beginning of the next calendar quarter when the fund balance, as adjusted to reflect the obligations and liabilities of the fund, drops to twelve million dollars (\$12,000,000) or less and remains at the higher amount, not to exceed three-tenths of one cent (0.3¢), until the adjusted fund balance reaches fifteen million dollars (\$15,000,000).

(3) The commission shall review the fund balance, as adjusted to reflect the obligations and liabilities of the fund, at least quarterly and report the rate of collection for the fee for the upcoming quarter to the director.

(4) During any period when bonds for the benefit of the fund are outstanding, the fee shall be collected at a rate of three-tenths of one cent (0.3¢) for each gallon irrespective of the balance of the fund.

(h)(1) During any period when bonds are outstanding for the benefit of the fund, the fee shall be deposited in the Petroleum Storage Tank Trust Fund Revenue Bond Debt Service Fund as provided in the Petroleum Storage Tank Trust Fund Bond Financing Act, § 15-5-1201 et seq.

(2) All other fees or moneys collected under this subchapter shall continue to be deposited into the fund.

(i) All fees shall be subject to collection and enforcement of collection under the Arkansas Tax Procedure Act, § 26-18-101 et seq.

**History.** Acts 1989, No. 173, § 4; 1989 951, § 5; 1995, No. 1054, § 3; 1997, No. (3rd Ex. Sess.), No. 65, §§ 5, 6; 1993, No. 641, § 4; 2005, No. 670, § 1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Wright, In ronment and Small Business, 13 U. Ark. Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Envi- Little Rock L.J. 417.

### 8-7-907. Payments for corrective action.

(a)(1) No payment for corrective action shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars (\$7,500) on corrective action for the occurrence, except in cases in which the Director of the Arkansas Department of Environmental Quality is using emergency authority under § 8-7-905(e). It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(2) Owners or operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for corrective actions.

(b) Payment for corrective action shall not exceed one million five hundred thousand dollars (\$1,500,000) per occurrence.

(c) All payments for corrective action expenses of the owner or operator shall be made only following proof that:



(1) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks;

(2) The corrective action expenses submitted for reimbursement consist of items and amounts that are in accord and compliant with Arkansas Department of Environmental Quality regulations; and

(3) The owner or operator cooperated fully with the department in corrective action to address the release.

(d) Payment for corrective action may be denied if the storage tank owner or operator fails to report a release as required by regulation promulgated by the Arkansas Pollution Control and Ecology Commission, and the failure to report the release causes a delay in the corrective action that contributes to an adverse impact to the environment.

(e)(1) The commission may provide through rule and regulation for interim payments for corrective action.

(2) Interim payments shall be subject to these limitations:

(A) Proof of compliance with the requirements of subdivisions (c)(1)-(3) of this section must be provided;

(B) Specific assurances must be provided that an approved corrective action plan, department directive, or order is being implemented and followed to date; and

(C)(i) Interim payments shall consist of payment of an amount not to exceed ninety percent (90%) of one million five hundred thousand dollars (\$1,500,000).

(ii) The remaining ten percent (10%) shall be released only upon final payment for corrective action concerning the occurrence.

(f)(1) In the event moneys are expended from the fund for corrective action and the owner or operator was not at the time of the occurrence eligible to receive reimbursement for corrective action, as defined by this subchapter and regulations promulgated under this subchapter, the department may recover from the owner or operator the amount of moneys expended from the fund for corrective action by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The department also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

(i) Owners or operators; or

(ii) The department.

(C) As used in this subsection, "third party" does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivisions (c)(1)-(3) of this section shall be eligible for reimbursement for corrective action as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in such a right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars (\$375) to the department.

(h) If the owner or operator is found to have been in noncompliance with any state and federal laws and regulations relating to storage tanks at the time of the occurrence, the department may assess a penalty in accordance with its applicable policies and procedures.

(i)(1) An owner or operator determined to be eligible for payment for corrective action for a release from a qualified storage tank may transfer the eligibility to a subsequent owner or operator of the storage tank if the department determines that the subsequent owner or operator has the financial and legal capacity to complete the corrective action and the subsequent owner or operator agrees in writing to assume responsibility for corrective action.

(2) A transfer under subdivision (i)(1) of this section shall not affect the potential liability of the owner or operator for undertaking any required corrective action.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in subdivision (i)(1) of this section.

(j)(1) A lender or secured creditor that holds ownership in a storage tank primarily to protect a security interest on the storage tank or the facility on which it is located, or both, is eligible for payment for corrective action if the lender or secured creditor assumes responsibility for completing the corrective action of a release from a qualified storage tank.

(2) If an owner or operator is performing corrective action to the department's satisfaction, a lender or secured creditor is not eligible to assume responsibility for corrective action or to receive payment for corrective action.

(3) Subdivisions (j)(1) and (j)(2) of this section do not affect the liability of the owner or operator for undertaking any required corrective action.

(k)(1) The Arkansas Pollution Control and Ecology Commission shall provide through rule and regulation for a procedure under which an

owner or operator or a consultant can be eligible for payment for the purchase of equipment needed for undertaking corrective action.

(2) The procedure adopted under subdivision (k)(1) of this section shall include without limitation:

(A) Depreciation schedules;

(B) Reasonable rent as appropriate;

(C) Evaluation of residual value of equipment; and

(D) Providing for reversion of equipment to the department if the responsibility for the maintenance or payment for the equipment is not met.

(3) The eligibility for payment of a consultant shall apply only to subdivision (k)(1) of this section.

**History.** Acts 1989, No. 173, § 7; 1989 (3rd Ex. Sess.), No. 65, §§ 8, 9; 1993, No. 951, § 6; 1997, No. 642, § 1; 1997, No. 1027, § 1; 1999, No. 599, § 1; 2001, No. 1471, §§ 4, 5; 2003, No. 1114, § 3; 2005, No. 670, § 2; 2005, No. 1678, § 1; 2009, No. 282, §§ 4, 5; 2011, No. 809, § 1.

**Amendments.** The 2009 amendment deleted (c)(4), which read: "The owner or operator submits a storage tank self-inspection audit as required in § 8-7-815"; deleted (d)(2), which read: "Submits an

inaccurate storage tank self-inspection audit that results in a delay in the corrective action of a release, and the delay contributes to an adverse impact to the environment" and redesignated the remaining subdivision accordingly; substituted "(c)(1)-(3)" for "(c)(1)-(4)" in (e)(2)(A) and (g)(1); and made related and minor stylistic changes.

The 2011 amendment added (i), (j), and (k).

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Environment and Small Business, 13 U. Ark. Little Rock L.J. 417.

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

## 8-7-908. Third-party claims.

(a)(1) No payment to any owner or operator against whom a third-party claim is brought for compensatory damages shall be paid from the Petroleum Storage Tank Trust Fund until the owner or operator has expended seven thousand five hundred dollars (\$7,500) on third-party claims for the occurrence, except in cases in which:

(A) The Director of the Arkansas Department of Environmental Quality is using his or her emergency authority under § 8-7-905(e); or

(B) The owner or operator has been discharged under the United States Bankruptcy Code or is determined by a court to be insolvent.

(2) It is the intent of the General Assembly that this initial level of expenditure be considered the equivalent of an insurance policy deductible.

(3) Owners and operators of underground storage tanks must demonstrate financial responsibility for the seven-thousand-five-hundred-dollar deductible for third-party liability costs.



(b) Payment for third-party claims shall not exceed one million dollars (\$1,000,000) per occurrence.

(c) All payments for third-party claims shall be made only following proof that:

(1) At the time of the occurrence, the owner or operator was in substantial compliance with the financial responsibility requirements;

(2) At the time of discovery of the release, the owner or operator had paid all fees required under state law or regulations applicable to petroleum storage tanks; and

(3) A valid final court order or valid final order of the Arkansas State Claims Commission establishing a judgment against the owner or operator for compensatory damages caused by an accidental release from a qualified storage tank has been entered.

(d)(1)(A) Any owner or operator against whom a third-party claim is filed in court or in the Arkansas State Claims Commission shall give written notice of the claim to the Arkansas Department of Environmental Quality no later than twenty (20) days after service of summons or receipt of notification of the claim from the Arkansas State Claims Commission.

(B) As a condition of eligibility, an owner or operator shall cooperate with and assist the department and, if applicable, the Attorney General's office in connection with the third-party claim.

(C) At a minimum, the cooperation shall include active participation by the owner or operator throughout the litigation and providing assistance as required by the department or the Attorney General's office during resolution of a third-party claim.

(D) In determining compliance with subdivisions (d)(1)(B) and (C) of this section, the director shall consider the owner's or operator's financial condition.

(2) Upon receipt of the notice, the department shall immediately notify the Attorney General, who shall have the right to intervene in any such lawsuit or proceeding in order to protect the interests of the state in the fund.

(3) Payment of third-party claims from the fund may be denied for any owner or operator who fails to give the department notice as required herein.

(e)(1) The Arkansas Pollution Control and Ecology Commission may provide through rules or regulations for payments for third-party claims under settlement agreements between the parties without entry of a final court order or Arkansas State Claims Commission order.

(2) Settlement payments for third-party claims shall be subject to these limitations:

(A) Proof of compliance with the requirement of subdivisions (c)(1) and (2) of this section must be provided;

(B) Specific assurances, such as dismissal with prejudice of the cause of action, that payment shall release the owner or operator from all future liability to the third-party claimant for this occurrence must be provided; and

(C) The director must determine that litigation would result in costs to the fund which would exceed the settlement amount and, therefore, it would be in the best interests of the fund to pay the settlement amount.

(f)(1) In the event moneys are expended from the fund for third-party claims and the owner or operator was not at the time of the occurrence in substantial compliance, as defined by this subchapter and regulations promulgated under this subchapter, the department may recover from the owner or operator the amount of moneys expended from the fund for the third-party claim by filing an action in the appropriate circuit court or by using the administrative procedures set forth in § 8-7-804.

(2)(A) The department also has a right of subrogation:

(i) To any insurance policies in existence at the time of the occurrence to the extent of any rights the owner or operator of a site may have had under that policy; and

(ii) Against any third party who caused or contributed to the occurrence.

(B) The right of subrogation shall apply to sites where corrective action is taken by:

(i) Owners or operators; or

(ii) The department.

(C) As used in this subsection, "third party" does not include a former owner or operator of the site where corrective action is taken.

(g)(1) Unknown petroleum storage tanks that have satisfied the requirements of subdivision (c)(3) of this section shall be eligible for reimbursement for third-party claims as provided by this section if:

(A) The unknown petroleum storage tank is discovered while removing, upgrading, or replacing a petroleum storage tank meeting the requirements of subsection (c) of this section or while performing petroleum investigation or corrective action activities required by federal or state laws and the petroleum storage tank meeting the requirements of subsection (c) of this section is located on the same property or facility; or

(B) The unknown petroleum storage tank is located on a right-of-way purchased by a city, county, or state governmental agency or entity and is discovered during construction in the right-of-way.

(2) Eligibility for reimbursement of unknown petroleum storage tanks will be conditioned on the payment of three hundred seventy-five dollars (\$375) to the department.

(h)(1) An owner or operator determined to be eligible for payment for third-party claims for a release may transfer the eligibility to an owner or operator that acquires the storage tank if the department determines that the subsequent owner or operator has the financial and legal capacity and has assumed in writing the responsibility for third-party liability.

(2) A transfer under subdivision (h)(1) of this section shall not affect the potential liability of the owner or operator for undertaking any required corrective action.

(3) The removal of the storage tank after initiation of corrective action shall not bar the transfer of eligibility as provided in (h)(1).

**History.** Acts 1989, No. 173, § 8; 1989 (3rd Ex. Sess.), No. 65, §§ 10-13; 1993, No. 951, § 7; 1997, No. 641, § 5; 1997, No. 642, § 2; 1997, No. 1027, § 2; 1999, No. 599, § 2; 2003, No. 1114, §§ 4-6; 2005, No. 1678, § 2; 2011, No. 809, § 2.

**Amendments.** The 2011 amendment added (h).

**U.S. Code.** The United States Bankruptcy Code, referred to in (a), is codified as 11 U.S.C. § 101 et seq.

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Wright, In Storage Tank Funds We Trust: An Analysis of Their Role in Protecting the Envi-

ronment and Small Business, 13 U. Ark. Little Rock L.J. 417.

### 8-7-909. Confidential treatment of information.

(a) Any records, reports, or information obtained by the Arkansas Department of Environmental Quality or its employees in the administration of this subchapter, except release data, shall be kept confidential upon a showing satisfactory to the Director of the Arkansas Department of Environmental Quality that the records, reports, or information would constitute a trade secret under the Arkansas Trade Secrets Act, § 4-75-601 et seq.

(b) As necessary to carry out the provisions of this subchapter, information afforded confidential treatment may be transmitted under a continuing claim of confidentiality to other officers or employees of the state or of the United States if the owner or operator of the facility to which the information pertains is informed of the transmittal and if the information has been acquired by the department under the provisions of this subchapter.

(c) The provisions of this section shall not be construed to limit the department's authority to release confidential information during emergency situations.

(d) Any violation of this section shall be unlawful and shall constitute a misdemeanor.

**History.** Acts 1993, No. 951, § 8.

## SUBCHAPTER 10 — PUBLIC EMPLOYEES' CHEMICAL RIGHT TO KNOW ACT

### SECTION.

8-7-1001. Title.

8-7-1002. Legislative findings and purpose.

8-7-1003. Definitions.

8-7-1004. Duties of public employers.

8-7-1005. Labeling.

8-7-1006. Material safety data sheets.

8-7-1007. Workplace chemical lists.

8-7-1008. Employee information and training.

### SECTION.

8-7-1009. Outreach activities of the director.

8-7-1010. Rights of public employees.

8-7-1011. Rule-making.

8-7-1012. Trade secrets.

8-7-1013. Complaints and investigations.

8-7-1014. Enforcement.

8-7-1015. Cause of action — Attorney's fees.

8-7-1016. No effect on other legal duties.



**Effective Dates.** Acts 1991, No. 556, § 20; July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to provide the public employees of the state with critical information about haz-

ardous chemicals to which they may be exposed. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect on July 1, 1991."

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### 8-7-1001. Title.

The provisions of this subchapter shall be known and may be cited as the "Public Employees' Chemical Right to Know Act".

**History.** Acts 1991, No. 556, § 1; 1991, No. 1172, § 1.

### 8-7-1002. Legislative findings and purpose.

(a) The General Assembly finds that the proliferation and variety of hazardous chemicals present in government employment may affect the health, safety, and welfare of public employees of the State of Arkansas.

(b) The General Assembly also finds that most private employers, in compliance with United States Occupational Safety and Health Administration regulations, provide their employees with training, information, and other protections concerning chemical hazards, but that public employees of the State of Arkansas and its political subdivisions are not subject to United States Occupational Safety and Health Administration regulations and do not receive the benefits of these protections.

(c) It is the purpose of this subchapter to provide public employees access to training and information concerning hazardous chemicals to enable them to minimize their exposure to such chemicals and protect their health, safety, and welfare.

**History.** Acts 1991, No. 556, § 2; 1991, No. 1172, § 2.

### 8-7-1003. Definitions.

(a) In this subchapter:

(1) "Chemical manufacturer" means an employer with a workplace where chemicals are produced for use or distribution;

(2) "Director" means the Director of the Department of Labor or his or her designee;

(3) "Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers;

(4) "Exposure" or "exposed" means that an employee is subjected to a hazardous chemical in the course of employment through any route of

entry (inhalation, ingestion, skin contact, or absorption, etc.), and includes potential, e.g., accidental or possible, exposure;

(5) "Hazard Communication Standard" means the Hazard Communication Standard adopted by the United States Occupational Safety and Health Administration and codified in the Code of Federal Regulations at 29 C.F.R. 1910.1200, as of July 1, 1991;

(6) "Hazardous chemical" means any element, chemical compound, or mixture of elements or compounds which is a physical hazard or a health hazard as defined by the Hazard Communication Standard;

(7) "Label" or "labeling" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals;

(8) "Material safety data sheet" means written or printed material concerning a hazardous chemical which is prepared in accordance with the Hazard Communication Standard;

(9)(A) "Public employee" means any employee of a public employer who may be exposed to hazardous chemicals in the workplace under normal operating conditions or foreseeable emergencies.

(B) Office workers and nonresident management are not generally included unless their job performance routinely involves potential exposure to hazardous chemicals;

(10) "Public employer" means the State of Arkansas and each political subdivision thereof, as defined in § 21-5-603(b);

(11) "Trade secret" is defined in accordance with § 4-75-601(4);

(12) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used and where employees are present;

(13) "Workplace" means an establishment, job site, or project at one (1) geographical location containing one (1) or more work areas under a public employer's control or direction; and

(14) "Workplace chemical list" means a list of hazardous chemicals in a workplace developed pursuant to § 8-7-1007.

(b) All other definitions of the Hazard Communication Standard as they exist on the date of enactment of this subchapter are hereby adopted and incorporated by reference.

**History.** Acts 1991, No. 556, § 3; 1991, No. 1172, § 3.

**Publisher's Notes.** In reference to the phrase "date of enactment of this subchapter", Acts 1991, No. 556 was approved

and signed by the Governor on March 14, 1991, and became effective July 1, 1991. Acts 1991, No. 1172 was approved and signed by the Governor on April 10, 1991, and became effective on July 15, 1991.

## 8-7-1004. Duties of public employers.

Each public employer shall do the following:

(1) Post adequate notice, as provided by the Director of the Department of Labor, at locations where notices are normally posted, informing employees about their rights under this subchapter;

(2) Ensure proper chemical labeling in accordance with § 8-7-1005;

(3) Maintain and make available material safety data sheets in accordance with § 8-7-1006;

(4) Compile and maintain a workplace chemical list in accordance with § 8-7-1007;

(5) Provide employee information and training in accordance with § 8-7-1008; and

(6) Handle trade secrets in accordance with § 8-7-1012.

**History.** Acts 1991, No. 556, § 4; 1991, No. 1172, § 4.

### **8-7-1005. Labeling.**

(a) Existing labels on containers of hazardous chemicals shall not be removed or defaced.

(b)(1) If a public employer transfers a hazardous chemical from the original container to another container, the employer shall reproduce or otherwise place on the container to which the hazardous chemical was transferred the identity of the hazardous chemical and appropriate hazard warnings.

(2) However, if such hazardous chemical is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act or the Arkansas Pesticide Control Act, § 2-16-401 et seq., then such employer shall reproduce on the container to which such hazardous chemical was transferred the chemical name or common name on the original container.

(c) A public employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers and which are intended only for the immediate use of the employee who performs the transfer. Public employees shall not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for immediate use by the employee who placed the hazardous chemical into the portable container. For the purposes of this subsection, the term “unlabeled container” means a container which is not labeled in accordance with this section or the Hazard Communication Standard.

**History.** Acts 1991, No. 556, § 5; 1991, No. 1172, § 5.

**Publisher's Notes.** The Hazard Communication Standard referred to in this section is codified at 29 C.F.R. 1910.1200.

**U.S. Code.** The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in this section, is codified as 7 U.S.C. § 136 et seq.

### **8-7-1006. Material safety data sheets.**

(a) Chemical manufacturers and distributors shall provide public employers which purchase a hazardous chemical from them with an appropriate material safety data sheet prior to or with their initial shipment of the hazardous chemical and with the first shipment after the material safety data sheet for the hazardous chemical is updated.

(b) Public employers shall maintain the most current material safety data sheet received from chemical manufacturers or distributors for each hazardous chemical in the workplace. If a material safety data



sheet has not been provided by the chemical manufacturer or distributor at the time the chemicals are received at the workplace, the public employer shall request one in writing from the chemical manufacturer or distributor within five (5) business days.

(c) Material safety data sheets shall be readily available upon request to employees and their designated representatives.

(d)(1) If a material safety data sheet for a hazardous chemical is not readily available upon request, an employee or his designated representative may submit a written request for the material safety data sheet to the public employer. The employer, within three (3) business days, either shall furnish a copy of the requested material safety data sheet to the requester or, if the requested material safety data sheet is not in the employer's possession, shall demonstrate to the requester that the employer has made an effort to obtain the material safety data sheet from the distributor, manufacturer, or other source.

(2) If after two (2) weeks from receipt of the request the public employer has not furnished the requester with the requested material safety data sheet, the employer shall not require the employee to work with the hazardous chemical for which the material safety data sheet was requested until the material safety data sheet is furnished, unless:

(A) The manufacturer of the substance for which the material safety data sheet was requested furnishes a written statement that the substance is not a hazardous chemical as defined in § 8-7-1003;

(B) The employer can demonstrate to the employee that the material safety data sheet cannot be obtained through no fault of the employer; or

(C) The employer can demonstrate to the employee that the material safety data sheet will be furnished by a date specified by the employer within one (1) additional week, provided that the employee shall not be required to work with the hazardous chemical if the material safety data sheet is not furnished by the date specified.

(3) If an employee declines to work with a hazardous chemical as authorized by this subsection, he shall not be penalized. Reassignment of an employee to other work at equal pay and benefits shall not be considered a penalty under this subsection.

(e) A public employer, chemical manufacturer, or distributor shall provide a copy of a material safety data sheet to the Director of the Department of Labor upon request.

(f) A public employer, chemical manufacturer, or distributor may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by providing a material safety data sheet for each element or compound in the mixture which is a hazardous chemical or by providing a material safety data sheet for the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) material safety data sheet for that element or compound is necessary.

**History.** Acts 1991, No. 556, § 6; 1991, No. 1172, § 6.

### **8-7-1007. Workplace chemical lists.**

(a) Each public employer shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical normally used, generated, or stored in the workplace in an amount equal to or greater than fifty-five gallons (55 gals.) or five hundred pounds (500 lbs.):

(1) The chemical name or common name used on the material safety data sheet or the container label;

(2) The Chemical Abstracts Service number for such hazardous chemical if such number is included on the material safety data sheet; and

(3) The work area or workplace in which the hazardous chemical is normally used, generated, or stored.

(b) Each public employer shall file the workplace chemical list with the Director of the Department of Labor no later than ninety (90) days after July 1, 1991, and shall update the list as necessary, but in any case by July 1 of each subsequent year.

(c) A public employer may meet the requirements of this section with respect to a hazardous chemical which is a mixture either by identifying on the workplace chemical list each element or compound in the mixture which is a hazardous chemical or by identifying on the list the mixture itself. If more than one (1) mixture has the same element or compound, only one (1) listing of the element or compound is necessary.

**History.** Acts 1991, No. 556, § 7; 1991, No. 1172, § 7.

### **8-7-1008. Employee information and training.**

(a) Each public employer shall provide an information and training program for its employees as defined in § 8-7-1003(9). Additional instruction shall be provided whenever a new hazard is introduced into their work area or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees shall be provided training before working in a work area containing hazardous chemicals.

(b)(1) The information and training program provided pursuant to this section shall be developed in accordance with regulations to be promulgated by the Director of the Department of Labor pursuant to § 8-7-1011 within six (6) months after July 1, 1991.

(2) The regulations shall include, at a minimum, requirements concerning:

(A) Information on interpreting labels and material safety data sheets and the relationship between these two (2) methods of hazard communication;

(B) The location and availability of the workplace chemical list and material safety data sheets;

(C) Any operations in an employee's work area where hazardous chemicals are present;

(D) The physical and health hazards of the hazardous chemicals in the work area;

(E) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area, such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.;

(F) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used;

(G) Frequency of training;

(H) General safety instructions on the handling, cleanup, and disposal of hazardous chemicals; and

(I) Employees' rights under this subchapter.

(c) Training programs addressing each of the requirements of subsection (b) of this section and conducted in full compliance with Title III of the federal Emergency Planning and Community Right to Know Act of 1986 shall be deemed to meet the requirements of this section.

(d) Public employers shall keep a record of the dates of training sessions given to their employees.

(e) Each public employer shall conduct the initial information and training program required pursuant to this section within one (1) year after July 1, 1991. This program may be conducted with the assistance of the director pursuant to § 8-7-1009.

(f) The director shall have authority to promulgate rules and regulations in accordance with § 8-7-1011:

(1) To exempt public employers from providing the information and training otherwise required by this section to employees with special skills and knowledge concerning hazardous chemicals, if such special skills and knowledge would make the information and training unnecessary; and

(2) To require public employers to provide refresher training for employees in workplaces or in circumstances in which the director reasonably determines such refresher training to be necessary and appropriate.

**History.** Acts 1991, No. 556, § 8; 1991, No. 1172, § 8.

**U.S. Code.** Title III of the federal Emergency Planning and Community

Right to Know Act of 1986, referred to in this section, is codified as 42 U.S.C. § 11001 et seq.



**8-7-1009. Outreach activities of the director.**

(a) The Director of the Department of Labor shall develop and give each public employer a suitable form of notice providing employees with information regarding their rights under this subchapter.

(b) The director shall develop and maintain a general information and training assistance program to aid public employers. Such information and assistance shall be made available to all public employers. As part of the program, the director may develop and distribute a supply of informational leaflets on public employers' duties, employees' rights, and the effects of hazardous chemicals. The director shall make available the basic materials for this program within nine (9) months after July 1, 1991.

(c) The director may contract with state universities or other public or private organizations to develop and implement the outreach program.

**History.** Acts 1991, No. 556, § 9; 1991, No. 1172, § 9.

**8-7-1010. Rights of public employees.**

(a) Public employees who may be exposed to hazardous chemicals shall be informed of such exposure and shall have access to the workplace chemical list, material safety data sheets for the chemicals on the list, and information and training as provided in this subchapter.

(b) No public employer shall discharge or cause to be discharged or otherwise discipline or discriminate against a public employee because the employee has requested information, filed a complaint, assisted an inspector of the Director of the Department of Labor, or instituted or caused to be instituted any complaint or proceeding under or related to this subchapter or has testified or is about to testify in any such proceeding or has exercised any rights afforded by this subchapter on behalf of the employee or other employees, nor shall any pay, position, seniority, or other benefits to which the employee may be entitled be lost because the employee exercised rights afforded by this subchapter.

(c) Any waiver of the benefits or requirements of this subchapter shall be against public policy and shall be null and void. Any public employer's request or requirement that a person waive any rights under this subchapter as a condition of or in connection with employment shall constitute a violation.

**History.** Acts 1991, No. 556, § 10; 1991, No. 1172, § 10.

**8-7-1011. Rule-making.**

(a) The Director of the Department of Labor may promulgate rules and regulations in accordance with the provisions of §§ 11-2-110, 11-2-112, and 11-2-113 to implement the provisions of this subchapter.

This authority shall include, but not be limited to, the authority to implement changes corresponding to future amendments to the Hazard Communication Standard to maintain consistency between this subchapter and the Hazard Communication Standard.

(b) The director shall promulgate regulations within six (6) months after July 1, 1991, requiring public employers to carry out information and training programs for their employees and specifying the minimum content of education and training programs as provided in § 8-7-1008.

**History.** Acts 1991, No. 556, § 11; munication Standard referred to in this 1991, No. 1172, § 11. section is codified at 29 C.F.R. 1910.1200.

**Publisher's Notes.** The Hazard Com-

### **8-7-1012. Trade secrets.**

(a) A public employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from a material safety data sheet or workplace chemical list only if all the following conditions are met:

(1) The claim that the information indicates that the specific chemical identity is being withheld as a trade secret;

(2) The material safety data sheet or the chemical indicates that the specific chemical identity is being withheld as a trade secret;

(3) All information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed; and

(4) The specific chemical identity is made available to health professionals, employees, and their designated representatives under the same conditions as are set out in the Hazard Communication Standard, 29 C.F.R. 1910.1200(i)(2)-(7), provided, the information disclosable to the United States Occupational Safety and Health Administration under the Hazard Communication Standard shall also be disclosable to the directors.

(b) The Director of the Department of Labor, upon his or her initiative or upon request by an employee, designated representative, or public employer, shall request any or all of the data substantiating the trade secret claim to determine whether the claim is valid. The director shall protect from disclosure all information coming into his or her possession that is marked as confidential and shall return all information so marked at the conclusion of his or her determination.

(c) Any information marked confidential pursuant to subsection (b) of this section shall not be disclosed during any administrative or judicial proceeding held pursuant to this section. Administrative hearings held pursuant to this section shall not be open to the public, but otherwise shall be held in a manner consistent with that provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for hearings in contested cases. The proponent of disclosure shall also have the right to be heard.

(d) No employee of the State of Arkansas shall disclose any information designated as a trade secret other than within the provisions of this subchapter.

(e) Nothing in this section shall be construed as requiring the disclosure under any circumstances of process or percentages of mixture information that is a trade secret.

**History.** Acts 1991, No. 556, § 12;      munication Standard referred to in this section is codified at 29 C.F.R. 1910.1200.

**Publisher's Notes.** The Hazard Com-

### **8-7-1013. Complaints and investigations.**

(a) Complaints received orally or in writing from public employees, their designated representatives, or public employers related to alleged violations of this subchapter shall be investigated in a timely manner by the Director of the Department of Labor.

(b) Officers or duly designated representatives of the director shall have the right of entry into any workplace or work area of a public employer during normal business hours to inspect and investigate complaints within reasonable limits and in a reasonable manner.

(c) The director shall have the same powers, duties, and authority to administer and enforce the provisions of this subchapter as are contained in §§ 11-2-108, 11-2-115, 11-2-116, and 11-2-118. Provided, however, that if there is a conflict between the provisions of this subchapter and the provisions named above, the provisions of this subchapter shall prevail.

**History.** Acts 1991, No. 556, § 13;  
1991, No. 1172, § 13.

### **8-7-1014. Enforcement.**

(a) If the Director of the Department of Labor determines that a public employer has violated a provision of this subchapter, the director shall issue an order to the official responsible for performing the duties required by this subchapter directing that official to cease and desist the act or omission constituting the violation. Such an order shall constitute prima facie evidence of a violation in any enforcement action filed pursuant to § 8-7-1015 of this subchapter.

(b) If the director determines that a public employer has violated § 8-7-1008 relating to employee information and training and within sixty (60) days of issuance of a cease and desist order the public employer has not remedied the violation, the director may conduct a program or programs to remedy the violation and require such public employer to reimburse the director for the cost of doing so.

(c) Violation of this subchapter by a public employer shall be cause for adverse personnel action against the supervisor or supervisors responsible for the violation, including, but not limited to, suspension, demotion, withholding of annual career service recognition payments,



or, in the case of serious and repeated violations, termination. Issuance of a cease and desist order by the director shall not be a prerequisite for such adverse personnel action, but such action shall only be taken in accordance with the civil service laws and regulations.

**History.** Acts 1991, No. 556, § 14;  
1991, No. 1172, § 14.

### **8-7-1015. Cause of action — Attorney's fees.**

(a) Any citizen denied the rights granted to him by this subchapter may commence a civil action against a public employer or responsible official of a public employer in the Pulaski County Circuit Court or the circuit court of the residence of the aggrieved party, if an agency of the state is involved, or any of the circuit courts of the appropriate judicial districts when any other public employer is involved. Issuance of a cease and desist order by the Director of the Department of Labor shall not be a prerequisite to the commencement of such an action.

(b) Upon written application of the person denied the rights provided for in this subchapter or any interested party, the court having jurisdiction shall fix a day the petition is to be heard within seven (7) days of the date of the application of the petitioner and shall hear and determine the case.

(c) The circuit courts shall have jurisdiction to restrain violations of this subchapter and to order all appropriate relief, including, but not limited to, the disclosure of chemical information, the rehiring or reinstatement of employees discriminated against because of their exercise of their rights under this subchapter, and the payment of any compensation such employees actually lost as a result of such violations.

(d) Those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

(e) In any action to enforce the rights granted by this subchapter or in any appeal therefrom, the court shall assess against the defendant reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed, unless the court finds that the position of the defendant was substantially justified or that other circumstances make an award of those expenses unjust. However, no expenses shall be assessed against the State of Arkansas or any of its agencies or departments. If the defendant has substantially prevailed in the action, the court may assess expenses against the plaintiff only upon a finding that the action was initiated primarily for frivolous or dilatory purposes.

**History.** Acts 1991, No. 556, § 15;  
1991, No. 1172, § 15.

**8-7-1016. No effect on other legal duties.**

The provision of information to a public employee pursuant to the provisions of this subchapter shall not be construed to affect the liability of a public employer with regard to the health and safety of an employee or other persons exposed to hazardous chemicals, nor shall it affect the employer’s responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. The provision of information to an employee shall not affect any other duty or responsibility of a chemical manufacturer or distributor to warn ultimate users of a hazardous chemical under any other provision of law.

**History.** Acts 1991, No. 556, § 16; 1991, No. 1172, § 16.

**SUBCHAPTER 11 — VOLUNTARY CLEANUP**

SECTION.

- 8-7-1101. Declaration of policy.
- 8-7-1102. Definitions.

SECTION.

- 8-7-1103. Department’s authority.
- 8-7-1104. Voluntary cleanup process.

**Effective Dates.** Acts 2003, No. 1193, § 2: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is an urgent need to return abandoned, idled, and underused industrial, commercial, and agricultural properties, otherwise known as Brownfield sites, to productive uses; that the state would benefit by allowing grant funds already received from the federal government, as well as future grant awards and

other moneys received by the Department of Environmental Quality, to be used to clean-up Brownfield sites; that a successful revolving loan fund program will assist the department to reach its goal of returning Brownfield sites to productive uses. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

**8-7-1101. Declaration of policy.**

The General Assembly finds and declares as follows:

- (1) The redevelopment of abandoned industrial, commercial, or agricultural sites or abandoned residential property should be encouraged as a sound land use management policy to prevent the needless development of prime farmland, open spaces, and natural and recreation areas and to prevent urban sprawl;
- (2) The redevelopment of abandoned sites should be encouraged so that these sites can be returned to useful, tax-producing properties to protect existing jobs and provide new job opportunities;
- (3) Persons interested in redeveloping abandoned sites should have a method of determining what their legal liabilities and cleanup responsibilities will be as they plan the reuse of abandoned sites;

(4) Incentives should be put in place to encourage prospective purchasers to voluntarily develop and implement cleanup plans of abandoned sites without the need for adversarial enforcement actions by the Arkansas Department of Environmental Quality;

(5) The department now routinely determines, through its permitting policies, when contamination will and will not pose unacceptable risks to public health or the environment, and similar concepts are used in establishing cleanup policies for abandoned sites;

(6) Parties and persons responsible under the law for pollution at abandoned sites should perform remedial responses which are fully consistent with existing requirements;

(7) As an incentive to promote the redevelopment of abandoned industrial sites, persons not responsible for preexisting pollution at or contamination on industrial sites should meet alternative cleanup requirements if they acquire title after the nature of conditions at the site has been disclosed and declare and commit to a specified future land use of the subject site; and

(8)(A) Property transactions at times necessitate title acquisition prior to completion of the actions contemplated at § 8-7-1104(b)-(d) by persons not previously involved with the site or otherwise considered responsible parties for environmental conditions at a site.

(B) These persons should not be foreclosed from participation under the procedures enacted under this subchapter.

(C) Therefore, these persons, at the discretion of the director, may submit a letter of intent that will set forth the persons' desire to purchase the site and retain their eligibility for participation in the voluntary cleanup program established by this subchapter.

**History.** Acts 1997, No. 1042, § 1;  
1999, No. 1164, § 108; 2001, No. 164, § 1;  
2005, No. 1164, § 1.

## 8-7-1102. Definitions.

(a) As used in this subchapter:

(1) "Abandoned site" means a site on which industrial, commercial, or agricultural activity occurred and for which no responsible person can reasonably be pursued for a remedial response to clean up the site or residential property or when the Arkansas Department of Environmental Quality determines it is in the best interest of the citizens of Arkansas to promote redevelopment under this subchapter while continuing to pursue the responsible party or parties;

(2) "Implementing agreement" means a plan, order, memorandum of agreement, or other enforceable document issued by the department under provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., the Remedial Action Trust Fund Act, § 8-7-501 et seq., or this subchapter, to implement the voluntary cleanup process described in § 8-7-1104;



(3) “Industrial, commercial, or agricultural activity” means commercial, manufacturing, agricultural, or any other activity done to further the development, manufacturing, or distribution of goods and services, as well as soil cultivation and crop or livestock production, including, but not limited to, research and development, warehousing, shipping, transport, remanufacturing, repair, and maintenance of commercial machinery and equipment;

(4) “Property” means property and improvements, including:

(A) A facility as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601(9); and

(B) A site as defined in § 8-7-203(11);

(5) “Prospective purchaser” means a person who expresses a willingness to acquire an abandoned site and is not responsible for any preexisting pollution at or contamination on the site;

(6) “Residential property” means any real property used as a dwelling or property with four (4) or fewer dwelling units used exclusively for residential use; and

(7)(A) “Site assessment” means the site assessment to establish the baseline level of existing contamination on a site.

(B) At a minimum, the assessment shall identify the location and extent of contamination, the quantity or level of contamination, the type of contamination, the probable source of contamination, and the risk or threat associated with the contamination as described in § 8-7-1104.

(C) The assessment also shall include a description of the intended land use of the site.

(b) Any other terms of this subchapter not expressly defined shall have the same definitions as provided in § 8-7-203, § 8-7-304, § 8-7-403 [repealed], or § 8-7-503, unless manifestly inconsistent with the provisions and remedial intent of this subchapter.

**History.** Acts 1997, No. 1042, § 1; Liability Act of 1980, referred to in 2001, No. 164, § 2; 2005, No. 1164, § 2. (a)(3)(A), is codified as 42 U.S.C. § 9601 et seq.

**U.S. Code.** The Comprehensive Environmental Response, Compensation, and

### 8-7-1103. Department’s authority.

(a) The Arkansas Department of Environmental Quality shall have authority regarding a voluntary response program to provide the following:

(1) Opportunities for technical assistance for voluntary response actions;

(2) Adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions;

(3) Streamlined procedures to ensure expeditious voluntary response actions;

(4) Oversight and enforcement authorities or other mechanisms that are adequate to ensure that:

(A) Voluntary response actions will protect human health and the environment and be conducted in accordance with applicable federal and state laws; and

(B) If the person conducting the voluntary response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed;

(5) Mechanisms for approval of a voluntary response action plan; and

(6)(A) A requirement for certification or similar documentation from the department to the person conducting the voluntary response action indicating that the response is complete.

(B) This certification shall document any conditions, restrictions, or limitations on the release from liability for contamination existing at the site before the department and the prospective purchaser enter into an implementing agreement.

(b) The department may establish and administer a revolving loan fund to make secured and unsecured loans or grants to eligible participants for the purpose of financing the assessment, investigation, or remedial actions at abandoned industrial, commercial, or agricultural sites, or at abandoned residential property.

**History.** Acts 1997, No. 1042, § 1;  
2003, No. 1193, § 1; 2005, No. 1164, § 3.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Assembly, Environmental Law, 26 U. Ark. Legislation, 2003 Arkansas General Assembly, Little Rock L. Rev. 405.

### 8-7-1104. Voluntary cleanup process.

(a) This section applies:

(1) To a person who:

(A) Is a prospective purchaser of an abandoned industrial, commercial, or agricultural property with known or suspected contamination;

(B) Is a prospective purchaser of abandoned residential property;

(C) Did not by act or omission cause or contribute to any release or threatened release of a hazardous substance on or from the identified abandoned site or is otherwise considered to be a responsible party pursuant to § 8-7-512(a)(2)-(4); and

(D) Will reuse or redevelop the property for industrial, commercial, agricultural, or residential uses which will sustain or create employment opportunities or otherwise augment the local or state economy and tax base, or both; or

(2) To a person who:

(A) Is not a responsible party pursuant to § 8-7-512(a)(2)-(4);

(B) Submits a Letter of Intent to Participate; and

(C) Subsequently acquires title to an abandoned site prior to completion of an implementing agreement as set forth in subsection (d) of this section.

(b) A comprehensive site assessment shall be completed to establish the baseline of existing contamination on the site.

(c) Following completion of a comprehensive site assessment, the Arkansas Department of Environmental Quality shall determine whether the assessment adequately identifies the environmental risks posed by the abandoned site.

(d)(1) The department and the prospective purchaser shall enter into an implementing agreement based on the results of the comprehensive site assessment.

(2) The implementing agreement shall establish cleanup liabilities and obligations for the abandoned site.

(3) The prospective purchaser shall provide notice of the implementing agreement in a newspaper of general circulation that serves the area in which the abandoned site is located.

(4) The notice shall be subject to the approval of the department.

(5) The implementing agreement shall establish the intended use of the property.

(6) The description of the intended use shall identify the site and the nature of the activity that the prospective purchaser proposes for the site.

(e) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser will be responsible to:

(1)(A) Remediate, remove and properly dispose of, or manage, consistent with applicable requirements, any containerized hazardous substances existing on site at the time of purchase, including drummed waste, lagoons, and impoundments and wastes in above-ground and underground tanks, which may pose a threat of release.

(B) Wastes that are disposed or managed on site will remain subject to applicable requirements;

(2) Take all necessary steps as appropriate to prevent migration of hazardous substances beyond the property boundary, considering the factors specified at subsection (h) of this section.

(3) Remedy any releases of hazardous substances as identified in the comprehensive site assessment required by subsection (b) of this section.

(f) For purposes of subdivision (e)(3) of this section, releases of hazardous substances are those conditions which pose either:

(1)(A) An unacceptable risk, either acute or chronic, to the health of employees or any other person likely to be exposed to the release from the site, based upon the intended site use described by the prospective purchaser in the comprehensive site assessment and described by the implementing agreement.

(B) A purchaser may not actually use the property in a manner which differs from the intended use identified in the implementing agreement contemplated by subsection (d) of this section, unless the



department and purchaser agree to a modification of the implementing agreement; or

(2) An unacceptable risk to degrade either groundwaters or surface waters, or any risk to degrade the extraordinary resource waters of the State of Arkansas.

(g) A remedial action pursuant to subdivision (e)(3) of this section shall eliminate unacceptable risks and prevent degradation of groundwaters and surface waters which would cause the unacceptable risk or degradation, or both, described in subdivision (f)(2) of this section.

(h)(1) The selection of remedial action shall be approved by the department after reasonable notice and after opportunity for hearing and shall become an amendment to the implementing agreement entered into pursuant to subsection (d) of this section.

(2) Selection of a remedial action shall include consideration of the following factors:

(A) The intended and allowable use of the abandoned site;

(B) The ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels considered to be an unacceptable health risk as described in subdivisions (f)(1) and (2) of this section;

(C) Consideration of the potential environmental risks of proposed alternative remedial action and its technical feasibility, reliability, and cost effectiveness;

(D) When an imminent and substantial endangerment is posed; and

(E) Whether institutional or engineering controls eliminate or partially eliminate the imminent and substantial endangerment or otherwise contain or prevent migration.

(3) Remedial actions pursuant to subdivision (e)(3) of this section are not required to provide for the removal or remediation of the conditions or contaminants causing a release or threatened release on the abandoned site if:

(A) Contaminants pose no unacceptable risk as described in subdivisions (f)(1) and (2) of this section, or if the remedial actions proposed in the assessment and intended uses of the abandoned site will eliminate unacceptable risks as described in subdivisions (f)(1) and (2) of this section; or

(B) Activities required to allow the intended reuse or redevelopment of the abandoned site are in a manner which will protect public health and the environment as described in subdivisions (f)(1) and (2) of this section.

(i) Nothing in this section shall relieve the prospective purchaser, after acquisition of legal title to the abandoned site, of any liability for contamination later caused by the purchaser.

(j) A prospective purchaser of an abandoned site under this subchapter shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the abandoned site prior to the implementing agreement with the department.

(k)(1) Once the prospective purchaser has acquired legal title to the abandoned site, the purchaser shall take all the steps necessary to prevent aggravating or contributing to the contamination of the air, land, or water, including downward migration of contamination from any existing contamination on the site.

(2) The purchaser shall not use or redevelop the site in any way which is likely to interfere with subsequent remedial actions or in a manner that differs from the intended use established in the implementing agreement described in subsection (d) of this section.

(l) A restriction shall be placed on the deed for the property covered by this subchapter, which restricts the use of the property to activities and compatible uses that will protect the integrity of any remedial action measures implemented on the property.

(m) Upon written notice to the department, the implementing agreement, including all rights and cleanup liabilities entered into by the department and the prospective purchaser under subsection (d) of this section, is transferable in its entirety to all subsequent owners of the property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the abandoned site.

(n) Subsequent owners shall receive a copy of the implementing agreement from the prospective purchaser and shall not use the site in a manner which is inconsistent with the intended use described in the implementing agreement authorized by subsection (d) of this section.

(o)(1) Within thirty (30) days of the date that the prospective purchaser acquires legal title to the abandoned site, the purchaser shall file a notice of the implementing agreement with the clerk of the circuit court in the county in which the site is located.

(2) Notice of any subsequent amendments to the implementing agreement shall also be filed with the clerk of the circuit court within thirty (30) days after their effective dates.

(3) The clerk of the circuit court shall docket and record the notice so that it appears in the purchaser's chain of title.

**History.** Acts 1997, No. 1042, § 1;  
2001, No. 164, § 3; 2005, No. 1164, § 4.

## SUBCHAPTER 12 — ABANDONED PESTICIDE DISPOSAL

### SECTION.

8-7-1201. Title.

8-7-1202. Purpose.

8-7-1203. Definitions.

8-7-1204. Abandoned Pesticide Advisory Board.

### SECTION.

8-7-1205. Powers and duties of the board.

8-7-1206. Abandoned pesticide disposal.

**Cross References.** Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund, § 19-5-998.

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### **8-7-1201. Title.**

This subchapter may be known and may be cited as the “Abandoned Agricultural Pesticide Disposal Act”.

**History.** Acts 1999, No. 1174, § 1.

### **8-7-1202. Purpose.**

It is the purpose of this subchapter to protect the citizens of the state and the environment by providing for the safe and proper disposal of abandoned pesticides used in agriculture and for other uses. Furthermore, it is the purpose of this subchapter to create an Abandoned Pesticide Advisory Board to review and approve proposed pesticide disposal projects, select contractors to dispose of abandoned pesticides used in agriculture and for other uses, and approve payments from the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund.

**History.** Acts 1999, No. 1174, § 1;  
2001, No. 1130, § 1.

### **8-7-1203. Definitions.**

As used in this subchapter:

(1) “Abandoned” means chemicals which are no longer used and for which there is no planned use;

(2) “Advisory board” means the Abandoned Pesticide Advisory Board;

(3) “Contractor” means a person who provides services for a fee involving the disposal of abandoned pesticides;

(4) “Fund” means the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund;

(5) “Pesticide” means any substance or mixture of substances intended for prevention, destroying, repelling, or mitigating any pests, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and any substance or mixture of substances intended to be used as a spray adjuvant and for other uses; and

(6)(A) “Plant regulator” means any substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth of maturation or to otherwise alter the behavior of plants or the produce thereof.



(B) The term shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculates, or soil amendments.

**History.** Acts 1999, No. 1174, § 1;  
2001, No. 1130, § 2.

#### **8-7-1204. Abandoned Pesticide Advisory Board.**

- (a) There is created an Abandoned Pesticide Advisory Board.
- (b) The board shall be composed of up to six (6) members:
  - (1) One (1) member shall be a representative from the Arkansas Farm Bureau Federation, Inc.;
  - (2) One (1) member shall be a representative from the Arkansas Natural Resources Commission;
  - (3) One (1) member shall be a representative from the University of Arkansas Cooperative Extension Service;
  - (4) One (1) member shall be a representative from the Arkansas Department of Environmental Quality;
  - (5) One (1) member may be a representative from the Natural Resources Conservation Service; and
  - (6) One (1) member shall be a representative from the State Plant Board, who shall serve as the board's chair.
- (c) Members of the board shall serve without compensation.

**History.** Acts 1999, No. 1174, § 1;  
2001, No. 1130, § 3.

#### **8-7-1205. Powers and duties of the board.**

The Abandoned Pesticide Advisory Board shall have the following powers and duties:

- (1) To identify any abandoned pesticides which shall be excluded from the collection and disposal program;
- (2) To advise and make recommendations to the State Plant Board regarding projects for collecting and disposing of abandoned pesticides;
- (3) To advise and make recommendations to the State Plant Board on the issuance of requests for proposals from contractors;
- (4) To review and evaluate proposals for the collection and disposal of abandoned pesticides;
- (5) To select proposals for the collection and disposal of abandoned pesticides to be implemented; and
- (6) To approve payments from the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund for collection and disposal projects.

**History.** Acts 1999, No. 1174, § 1;  
2001, No. 1130, § 4.

**8-7-1206. Abandoned pesticide disposal.**

(a)(1) Moneys received into the Abandoned Agricultural Pesticide and Plant Regulator Disposal Trust Fund shall be from gifts, grants, or funds from entities other than the State Plant Board and from a fee of fifty dollars (\$50.00) per registered pesticide per registrant per year levied by the State Plant Board for the specific purpose of funding the disposal of abandoned pesticides:

(2) This fee shall be known as the Abandoned Pesticide Disposal Fee and shall not be a part of the pesticide registration fee collected pursuant to § 2-16-407(f).

(3) The Abandoned Pesticide Disposal Fee shall not apply to products classified as:

(A) "Sanitizers and disinfectants" by the board;

(B) Aerosol products which are not labeled for agricultural use;

(C) Insect repellants which are labeled for use on the human body or clothing;

(D) Silica gels and other nonvolatile ready-to-use paste, foam, or gel formulations of insecticidal baits;

(E) Nonvolatile insecticidal baits in tamper resistant bait stations;

(F) Insecticidal flea and tick collars and spot-on flea treatments for dogs and cats; or

(G) Insecticidal cattle ear tags.

(4) Collection of the fee shall be discontinued upon completion of the abandoned pesticide collection program.

(5) Moneys received into the fund shall be utilized by the State Plant Board, as authorized by the Abandoned Pesticide Advisory Board, to pay for projects and other activities relating to the collection and disposal of abandoned pesticides and for administrative support.

(6) The total allocation of funds for administrative support shall not exceed two hundred fifty thousand dollars (\$250,000) per biennium.

(b)(1) The State Plant Board shall administer the program relating to the collection and disposal of abandoned pesticides, as authorized by the Abandoned Pesticide Advisory Board.

(2) The duties of the State Plant Board shall include:

(A) Developing and issuing requests for proposals from contractors to collect and dispose of abandoned pesticides;

(B) Contracting for the collection and disposal of abandoned pesticides; and

(C) Paying contractors for services relating to the collection and disposal of abandoned pesticides.

**History.** Acts 1999, No. 1174, § 1;  
2001, No. 1130, § 5.

SUBCHAPTER 13 — PHASE I ENVIRONMENTAL SITE ASSESSMENT CONSULTANT ACT

SECTION.

- 8-7-1301. Title.
- 8-7-1302. Purpose.
- 8-7-1303. Definitions.

SECTION.

- 8-7-1304. Powers and duties.
- 8-7-1305 — 8-7-1310. [Repealed.]
- 8-7-1311. Fees.

8-7-1301. Title.

This subchapter shall be known and may be cited as the “Phase I Environmental Site Assessment Consultant Act”.

**History.** Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1. **Assessment Consultant Act”** for “Environmental Site Assessment Consultant and Hazardous Substance Response Contractor Certification Act.”

8-7-1302. Purpose.

It is the purpose of this subchapter to authorize the Arkansas Department of Environmental Quality to establish and administer a certification program to maintain a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, as it exists on January 1, 2007, or a Phase I environmental site assessment under the American Society for Testing and Materials standard E1527-05 as in effect on January 1, 2007.

**History.** Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1. **Amendments.** The 2007 amendment rewrote the section.

8-7-1303. Definitions.

As used in this subchapter:

- (1) “Person” means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, state or federal government or agency, or any other legal entity however organized;
- (2) “Phase I consultant” means a person that performs a Phase I environmental site assessment for a fee or in conjunction with other services for which a fee is charged; and
- (3) “Phase I environmental site assessment” means an assessment defined as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act or a Phase I environmental site assessment as that term is used in the American Society for Testing and Materials standard E1527-00 as in effect on January 1, 2005.



**History.** Acts 2005, No. 2141, § 1; 2007, No. 827, § 120; 2007, No. 1018, § 1.

**A.C.R.C. Notes.** Pursuant to Acts 2007, No. 827, § 240, the amendment of § 8-7-1303 by Acts 2007, No. 1018, § 1, supersedes the amendment of § 8-7-1303 by Acts 2007, No. 827, § 120.

**Amendments.** The 2007 amendment by No. 827 deleted former (1), (4), and (5) and redesignated the remaining subdivisions accordingly; deleted “the Emergency Response Fund Act, § 8-7-401 et seq.” following “§ 8-7-201 et seq.” in present (1) and (10)(B); substituted “comprehensive site assessment” for “comprehensive envi-

ronmental site assessment” in present (2) and (4); rewrote present (5) and (6); substituted “environmental site assessment consultant” for “consultant” in present (8); and made related and stylistic changes.

The 2007 amendment by No. 1018 deleted former (1) through (9); redesignated former (10) through (12) as present (1) through (3); in (3), deleted “a Phase I environmental site assessment as that term is used in the American Society for Testing and Materials standard E1527-00 as in effect on January 1, 2005”; deleted (13); and made related changes.

### 8-7-1304. Powers and duties.

(a) The Arkansas Department of Environmental Quality shall maintain and make available to the public a list of Phase I consultants who meet the minimum qualifications for an environmental professional who undertakes a Phase I environmental site assessment, referred to as “all appropriate inquiry” under the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, and the rules promulgated under that federal act.

(b) The Arkansas Pollution Control and Ecology Commission shall promulgate rules to implement this subchapter.

**History.** Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1.

**Amendments.** The 2007 amendment rewrote the section.

### 8-7-1305 — 8-7-1310. [Repealed.]

**A.C.R.C. Notes.** Pursuant to Acts 2007, No. 827, § 240, the repeal of § 8-7-1305 by Acts 2007, No. 1018, § 1 supersedes the amendment of § 8-7-1305 by Acts 2007, No. 827, § 121.

Pursuant to Acts 2007, No. 827, § 240, the repeal of § 8-7-1306 by Acts 2007, No. 1018, § 1 supersedes the amendment of § 8-7-1306 by Acts 2007, No. 827, § 122.

Pursuant to Acts 2007, No. 827, § 240, the repeal of § 8-7-1307 by Acts 2007, No. 1018, § 1 supersedes the amendment of § 8-7-1307(a)(2) by Acts 2007, No. 827, § 123, and the amendment of § 8-7-1307(b)(3) and (4) by Acts 2007, No. 827, § 124.

**Publisher’s Notes.** These sections,

concerning applicability, certification categories, certification criteria and procedure, unlawful acts, disciplinary actions and suspension or revocation of certification, and rules and regulations and appeals and hearings, were repealed by Acts 2007, No. 1018, § 1. The sections were derived from the following sources:

8-7-1305. Acts 2005, No. 2141, § 1; 2007, No. 827, § 121.

8-7-1306. Acts 2005, No. 2141, § 1; 2007, No. 827, § 122.

8-7-1307. Acts 2005, No. 2141, § 1; 2007, No. 827, §§ 123, 124.

8-7-1308. Acts 2005, No. 2141, § 1.

8-7-1309. Acts 2005, No. 2141, § 1.

8-7-1310. Acts 2005, No. 2141, § 1.

8-7-1311. Fees.

(a)(1) Under regulations promulgated by the Arkansas Pollution Control and Ecology Commission, the Arkansas Department of Environmental Quality may assess fees to Phase I consultants who apply to be placed on the list maintained under § 8-7-1304.

(2) Fees shall be reasonable and appropriate and subject to periodic review.

(b) All fees collected under this subchapter shall be deposited into the Hazardous Waste Permit Fund, § 19-6-434.

(c) Fees collected under this subchapter shall be used for the purposes of administering this subchapter.

**History.** Acts 2005, No. 2141, § 1; 2007, No. 1018, § 1.      tors and” following “fees to” and added “who apply to be placed on the list maintained under § 8-7-1304.”

**Amendments.** The 2007 amendment, in (a)(1), deleted “participating contrac-

SUBCHAPTER 14 — CONTROLLED SUBSTANCES CONTAMINATED PROPERTY  
CLEANUP ACT

SECTION.	SECTION.
8-7-1401. Title.	manufacture of controlled substances.
8-7-1402. Professional cleanup of properties contaminated through the manufacture of controlled substances.	8-7-1404. Recordkeeping required.
8-7-1403. Reporting of properties contaminated through the	8-7-1405. Notice — Cleanup — Residual contamination.
	8-7-1406. Remediated property.
	8-7-1407. Penalties.

8-7-1401. Title.

This subchapter shall be known and may be cited as the “Controlled Substances Contaminated Property Cleanup Act”.

**History.** Acts 2007, No. 864, § 1.

8-7-1402. Professional cleanup of properties contaminated through the manufacture of controlled substances.

- (a) The Arkansas Department of Environmental Quality shall:
- (1) Establish and administer a certification program to:
- (A) Certify contractors who choose to undertake the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances; and
- (B) Require as a condition of certification that the contractors demonstrate that they have qualifications required to undertake inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances;

(2) Have established the certification program no later than May 1, 2008;

(3) By March 1, 2008, establish standards for the remediation of properties contaminated through the manufacture of controlled substances;

(4) Make the certification program rules and the remediation standards available to law enforcement officials and the public:

(A) On the department's website; and

(B) In hard copy upon request to the department; and

(5) Annually review and update the remediation standards.

(b)(1) The Arkansas Pollution Control and Ecology Commission shall promulgate rules to implement the certification program for contractors in the inspection, sampling, remediation, and removal of contaminated materials from property contaminated through the manufacture of controlled substances.

(2) The rules promulgated by the commission under this section shall include without limitation:

(A) Application forms for certification;

(B) Continuing education requirements;

(C) Professional and technical standards for certification;

(D) Renewals of certification;

(E) Procedures for revocation and other actions that affect the status of certification; and

(F) Reasonable fees.

**History.** Acts 2007, No. 864, § 1.

### **8-7-1403. Reporting of properties contaminated through the manufacture of controlled substances.**

(a) If a private property owner finds an abandoned laboratory for the manufacture of controlled substances on his or her property and there has been no active on-site law enforcement involvement, the property owner shall notify local law enforcement for proper removal of contaminated material.

(b)(1) If a property owner finds or becomes aware of evidence of a laboratory for the manufacture of controlled substances on his or her property, the property owner shall have the property inspected in accordance with the guidelines established by the Arkansas Department of Environmental Quality under this subchapter by a contractor certified by the department under § 8-7-1402.

(2) If the contractor selected by the property owner under subdivision (b)(1) of this section verifies that a laboratory for the manufacture of controlled substances has been on the property, the contractor shall notify the department, and the department shall place the property on the contaminated properties list required under § 8-7-1404.

**History.** Acts 2007, No. 864, § 1.



**8-7-1404. Recordkeeping required.**

(a) By May 1, 2008, the Arkansas Department of Environmental Quality shall maintain records concerning properties contaminated through the manufacture of controlled substances.

(b) The department shall:

(1) Create a list of properties contaminated through the manufacture of controlled substances;

(2) Place a contaminated property on the contaminated properties list;

(3) Not determine that a property has been adequately remediated unless:

(A) The inspection, sampling, remediation, and removal of contaminated materials is performed:

(i) By or under the direction and responsible charge of an individual who has obtained a certification under the rules established by the Arkansas Pollution Control and Ecology Commission under this subchapter; or

(ii) By an employee of a public agency that has the responsibility of regulatory enforcement, emergency response, the protection of public health and welfare, or the protection of the environment while the employee is acting in the course of that employment; and

(B) The property has met the remediation standards developed by the department;

(4)(A) Post the results of a cleanup on the department's website for ten (10) working days after the department determines that the property has been adequately remediated.

(B) After the ten (10) working days of posting required under subdivision (b)(4)(A) of this section, the department shall remove from the department's website the formerly contaminated property and the results of the cleanup; and

(5) Remove a property from the list when the department finds that the property has been adequately remediated.

(c)(1) The department shall make the list of properties contaminated through the manufacture of controlled substances available to law enforcement officials and to the public:

(A) On the department's website; and

(B) In hard copy upon request to the department.

(2) The department shall keep hard copies of the information required under this section until the department has removed the property from the list of properties contaminated through the manufacture of controlled substances.

**History.** Acts 2007, No. 864, § 1; 2009, No. 1199, § 10.

redesignated (b)(3)(A)(i), and made related and minor stylistic changes.

**Amendments.** The 2009 amendment

**8-7-1405. Notice — Cleanup — Residual contamination.**

(a) If a law enforcement officer discovers a laboratory for the manufacture of controlled substances or arrests a person for having equipment used in manufacturing controlled substances on any real property, the law enforcement officer shall at the time of the discovery or arrest deliver a copy of the notice of removal required under subsection (d) of this section to:

(1) The owner of the real property if the owner is present at the time of the discovery or arrest;

(2) The on-site manager if the on-site manager is present at the time of the discovery or arrest;

(3) An on-site drop box if available; or

(4) In the case of a tenant-owner unit in a space-rental mobile home or a recreational vehicle park to:

(A) The occupant if the occupant is on site at the time of delivery;  
or

(B) The on-site park landlord if the on-site park landlord is present at the time of delivery.

(b)(1) If neither the owner nor the on-site manager of a property used in manufacturing controlled substances is on the property at the time of the discovery of or arrest regarding a laboratory for the manufacture of controlled substances, the law enforcement officer shall make every reasonable effort to obtain the necessary contact information concerning the owner from the tenant, property manager, or neighbors.

(2) Within five (5) business days after the discovery of or arrest regarding a laboratory for the manufacture of controlled substances, the law enforcement officer shall send the notice of removal required under subsection (d) of this section by certified mail and regular mail to the owner of the property and the owner's on-site manager or, in the case of a space-rental mobile home or a recreational vehicle park, to the park landlord.

(3) The Arkansas Department of Environmental Quality shall cooperate with the Arkansas Crime Information Center to create a computer link that will allow the center to transfer to the department information from the National Clandestine Laboratory Seizure Report required under 28 C.F.R. Part 23 that is relevant to the notice of removal required under subsection (d) of this section.

(c)(1) At the time a law enforcement officer removes the gross contamination from property used as a laboratory for the manufacture of controlled substances, the law enforcement officer shall order the removal of all persons from the residually contaminated portion of the property or dwelling unit or in the case of a space-rental mobile home or a recreational vehicle park from the unit located on the property.

(2) After the law enforcement officer removes all persons under subdivision (c)(1) of this section, the law enforcement officer shall affix the notice of removal required under subsection (d) of this section in a conspicuous place on the property or in the case of a space-rental mobile home or a recreational vehicle park on the unit located on the property.

(d) The notice of removal under this section shall be in writing and shall contain all of the following:

(1) The word "WARNING" in large bold type at the top and the bottom of the notice;

(2) The date of the seizure and removal;

(3) The address or location of the property, including the identification of any dwelling unit, room number, apartment number, or vehicle number;

(4) The name of the law enforcement agency that seized the laboratory for the manufacture of controlled substances and the agency's contact telephone number;

(5) A list of telephone numbers and contact information for all local and state agencies involved in the process of remediation;

(6) The contact numbers for local and state agencies associated with the cleanup of laboratories for the manufacture of controlled substances; and

(7) A statement that:

(A) A laboratory for the manufacture of controlled substances was discovered on the property;

(B) Chemicals or equipment, or both, that were used in the manufacture of controlled substances were seized at the property;

(C) Hazardous substances, toxic chemicals, or other waste products may still be present on the property or, in the case of space-rental mobile home or a recreational vehicle park, in the unit located on the property;

(D)(i) It is unlawful for any unauthorized person to enter a residually contaminated property or in the case of a space-rental mobile home or recreational vehicle park the unit located on the property until the Arkansas Department of Environmental Quality establishes that the portion of the property identified as residually contaminated has been properly remediated.

(ii) The following persons are authorized to enter a residually contaminated property or in the case of a space-rental mobile home or recreational vehicle park the unit located on the property:

(a) An employee of the department;

(b) A law enforcement officer;

(c) The owner of a residually contaminated property; and

(d) A representative of an owner of a residually contaminated property if the representative has signed a waiver of liability;

(E) Failure to comply with § 8-7-1405 is a violation of the department's rules pertaining to the cleanup of laboratories for the manufacture of controlled substances;

(F) Disturbing the notice of removal posted on the property is a violation of the department's rules concerning the cleanup of laboratories for the manufacture of controlled substances; and

(G) The owner of the property is responsible for remediating the residually contaminated portion of the property in compliance with the department's rules concerning the cleanup of laboratories for the manufacture of controlled substances.



**History.** Acts 2007, No. 864, § 1; 2009, No. 1199, § 11.

**Amendments.** The 2009 amendment

rewrote the introductory language of (d)(7)(D)(ii), and made a minor stylistic change in (d)(7)(D)(ii)(a).

### 8-7-1406. Remediated property.

(a) After property contaminated through the manufacture of controlled substances is remediated and the property owner receives official notification from the Arkansas Department of Environmental Quality, no person, including the property owner, landlord, and real estate agent, is required to report or otherwise disclose the past contamination.

(b) Unless retention is mandated by federal law, the department shall destroy all copies of information required to be kept under this subchapter that refer to a specific property location once the property is officially removed from the contaminated properties list.

**History.** Acts 2007, No. 864, § 1.

### 8-7-1407. Penalties.

Any person who pleads guilty or nolo contendere to or is found guilty of violating § 8-7-1405(d)(7)(D) or § 8-7-1405(d)(7)(E) is guilty of a Class B misdemeanor.

**History.** Acts 2007, No. 864, § 1.

## CHAPTER 8 INTERSTATE COMPACTS

### SUBCHAPTER.

1. INTERSTATE ENVIRONMENTAL COMPACT.
2. CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control &

Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of

Pollution Control and Ecology prior to the effective date of the name change.”

## SUBCHAPTER 1 — INTERSTATE ENVIRONMENTAL COMPACT

### SECTION.

8-8-101. Purpose.

8-8-102. Text of compact.

### SECTION.

8-8-103. Supplementary agreement appropriations.

### 8-8-101. Purpose.

(a) The General Assembly recognizes that:

(1) The purity and life-giving qualities of our environment are of primary concern to the people of Arkansas and to all Americans;

(2) The ultimate responsibility for the quality of the Arkansas environment rests upon the state government; and

(3) Ecological systems and environmental problems cross state boundaries.

(b) Therefore, the General Assembly recognizes that the discharge of this responsibility can be enhanced by acting in concert and cooperation with our sister states and with the federal government, insofar as such cooperative governmental efforts are consistent with the laws of the State of Arkansas. For these reasons, the Interstate Environmental Compact is approved.

**History.** Acts 1971, No. 304, § 1; A.S.A. 1947, § 82-1974.

### 8-8-102. Text of compact.

The Interstate Environmental Compact is enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

## ARTICLE 1.

(1) Signatory states hereby find and declare:

(a) The environment of every state is affected with local, state, regional, and national interests and its protection, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatories.

(b) Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

(c) The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative, or joint exercise of control measures is in their common interests.

(2) The purposes of the signatories in enacting this compact are:

(a) To assist and participate in the national environment protection program as set forth in federal legislation; to promote intergovernmental

tal cooperation for multistate action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;

(b) To preserve and utilize the functions, powers, and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the compact.

(3)(a) Nothing contained in this compact shall impair, affect, or extend the constitutional authority of the United States.

(b) The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for the purpose to revise the terms and conditions of its consent.

(4) Nothing contained in this compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected except as expressly provided in a supplementary agreement under Article 4.

## ARTICLE 2.

(1) This compact shall be known and may be cited as the Interstate Environmental Compact.

(2) For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

(a) "State" shall mean any one of the fifty states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.

(b) "Interstate environment pollution" shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction of territories of more than one state.

(c) "Government" shall mean the governments of the United States and the signatory states.

(d) "Federal government" shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch, or other unit thereof, as the case may be, but shall not include the District of Columbia.

(e) "Signator" shall mean any state which enters into this compact and is a party thereto.

## ARTICLE 3.

AGREEMENTS WITH THE FEDERAL GOVERNMENT AND OTHER AGENCIES. Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environment with the federal government or with any intergovernmental or interstate agencies.



## ARTICLE 4.

(1) Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under paragraph (6) and paragraph (8) of this article.

(2) **RECOGNITION OF EXISTING NONENVIRONMENTAL INTERGOVERNMENTAL ARRANGEMENTS.** The signatories agree that existing federal-state, interstate, or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this compact.

(3) **RECOGNITION OF EXISTING INTERGOVERNMENTAL AGREEMENTS DIRECTED TO ENVIRONMENTAL OBJECTIVES.** All existing interstate compacts directly relating to environmental protection are hereby expressly recognized, and nothing in this compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

(4) **MODIFICATION OF EXISTING COMMISSIONS AND COMPACTS.** Recognition herein of multistate commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multistate organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multistate organizations and interstate compacts recognized herein by the federal government or states party thereto.

(5) **RECOGNITION OF FUTURE MULTISTATE COMMISSIONS AND INTERSTATE COMPACTS.** Nothing in this compact shall be construed to prevent signatories from entering into multistate organizations or other interstate compacts which do not conflict with their obligations under this compact.

(6) **SUPPLEMENTARY AGREEMENTS.** Any two (2) or more signatories may enter into supplementary agreements for joint, coordinated, or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies, or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purpose of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities, or duties under this compact of signatories participating therein as embodied in this compact.

(7) **EXECUTION OF SUPPLEMENTARY AGREEMENTS AND EFFECTIVE DATE.** The Governor is authorized to enter into supplementary agreements for the state, and his official signature shall render the agreement immediately binding upon the state;

Provided that:

(a) The legislature of any signatory entering into such a supplementary agreement shall at its next legislative session by concurrent

resolution bring the supplementary agreement before it and by appropriate legislative action approve, reverse, modify, or condition the agreement of that state.

(b) Nothing in this agreement shall be construed to limit the right of Congress by act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

(8) SPECIAL SUPPLEMENTARY AGREEMENTS. Signatories may enter into special supplementary agreements with the District of Columbia or foreign nations for the same purposes and with the same powers as under Paragraph (6), Article 4, upon the condition that such nonsignatory party accept the general obligations of signatories under this compact. Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

(9) JURISDICTION OF SIGNATORIES RESERVED. Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish, or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, except as specifically limited by this compact or a supplementary agreement.

(10) COMPLEMENTARY LEGISLATION BY SIGNATORIES. Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this article.

(11) LEGAL RIGHTS OF SIGNATORIES. Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this nation.

## ARTICLE 5.

(1) CONSTRUCTION, AMENDMENT, AND EFFECTIVE DATE. It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereunder shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction and not inconsistent with any provision of this compact or a supplementary agreement entered into pursuant hereto.

(2) The provisions of this compact or of agreements hereunder shall be severable and if any phrase, clause, sentence, or provisions of this compact, or such an agreement is declared to be contrary to the Constitution of any signatory or of the United States or is held invalid, the constitutionality of the remainder of this compact or of any agreement and the applicability thereof to any participating jurisdiction, agency, person, or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the

provisions of this compact shall be reasonably and liberally construed in the context of its purposes.

(3) Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

(4) This compact shall become binding on a state when enacted by it into law, and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein.

(5) A state may withdraw from this compact by authority of an act of its legislature one (1) year after it notifies all signatories in writing of an intention to withdraw from the compact. Provided, withdrawal from the compact affects obligations of a signatory imposed on it by supplementary agreements to which it may be a party only to the extent and in accordance with the terms of such supplementary agreements.

**History.** Acts 1971, No. 304, § 2; A.S.A. 1947, § 82-1975.

### **8-8-103. Supplementary agreement appropriations.**

Any supplementary agreement entered into pursuant to Article 4 of the compact and requiring the expenditure of funds or the assumption of an obligation to expend funds shall not become effective as to this state prior to the making of an appropriation therefor by the General Assembly, with the following exceptions:

(1) The Governor may use special appropriations as are made available for emergency purposes;

(2) The Governor may use any such funds as are made available to him or her by the federal government or any other source specifically for the creation and implementation of supplemental agreements under this subchapter; and

(3) Where an agency of the state can better carry out the purpose for which it was created by the legislature by cooperative actions with other states under the terms of this compact, that agency may, with the consent of the Governor, expend funds appropriated to it for such purposes.

**History.** Acts 1971, No. 304, § 3; A.S.A. 1947, § 82-1976.

## **SUBCHAPTER 2 — CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT**

### **SECTION.**

8-8-201. Penalties.

8-8-202. Text of compact.

8-8-203. State member and alternate on  
commission.

### **SECTION.**

8-8-204. [Repealed.]

8-8-205. Cooperation with commission.

8-8-206. Approval of rates at regional fa-  
cility.



**Cross References.** Atomic energy and nuclear materials, § 15-10-301 et seq.

Hazardous waste management, § 8-7-201 et seq.

Radiation protection, § 20-21-201 et seq.

**Effective Dates.** Acts 1985, No. 929, § 3: Apr. 15, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the appointment of Arkansas members to the Central Interstate Low-Level Radioactive Waste Commission will assist in expediting the orderly function of the commission; and that the creation of a Low-Level Radioactive Waste Advisory Group will be able to provide Arkansas' members with timely and helpful technical advice on issues of concern to the commission. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety shall

be in full force and effect from and after the passage and approval."

Acts 1991, No. 847, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the proper disposal of low level radioactive waste is becoming more and more important; that Arkansas has entered into the Central Interstate Low-Level Radioactive Waste Compact with several other states; that it is essential to the proper administration and operation of the Central Interstate Low-Level Radioactive Waste Compact that the compact be revised to accomodate current needs; that this act is designed to make such revisions and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

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## 8-8-201. Penalties.

(a) Any person who violates any provision of this subchapter or commits any unlawful act under this subchapter shall be guilty of a misdemeanor. Upon conviction, that person shall be subject to imprisonment for not more than one (1) year or a fine of not more than ten thousand dollars (\$10,000), or subject to both such fine and imprisonment. Each day or part of a day during which the violation is continued or repeated shall constitute a separate offense.

(b) Any person who violates any provision of this subchapter or commits any unlawful act under this subchapter shall be subject to a civil penalty in such amount as the court shall find appropriate, not to exceed twenty-five thousand dollars (\$25,000) per day of such violation, to the payment of any expenses reasonably incurred by the state in removing, correcting, or terminating any adverse effects resulting therefrom, including the cost of the investigation, inspection, or survey establishing such violation or unlawful act, and the payment to the state of reasonable compensation of any actual damage resulting therefrom.

**History.** Acts 1983, No. 9, § 5; A.S.A. 1947, § 82-4405.

## 8-8-202. Text of compact.

The Central Interstate Low-Level Radioactive Waste Compact is hereby enacted into law and entered into by the State of Arkansas with

any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

## ARTICLE I.

### POLICY AND PURPOSE

The party states recognize that each state is responsible for the management of its nonfederal low-level radioactive wastes. They also recognize that the Congress, by enacting the Low-Level Radioactive Waste Policy Act (Public Law 96-573), has authorized and encouraged states to enter into compacts for the efficient management of wastes. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment, and to provide for and encourage the economical management of low-level radioactive wastes. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the region; to limit the number of facilities needed to effectively and efficiently manage low-level radioactive wastes and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states. It is the policy of the party states that activities conducted by the commission are the formation of public policies and are therefore public business.

## ARTICLE II.

### DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

(a) "Commission" means the Central Interstate Low-Level Radioactive Waste Compact Commission;

(b) "Disposal" means the isolation and final disposition of waste;

(c) "Decommissioning" means the measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at the facility;

(d) "Extended care" means the continued observation of a facility after closure for the purpose of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and includes undertaking any action or cleanup necessary to protect public health and the environment;

(e) "Facility" means any site, location, structure, or property used or to be used for the management of waste;

(f) "Generator" means any person who, in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, biomedical research, other industrial or commercial activity, other research, or mining in a party state, produces or

processes waste. "Generator" does not include any person who receives waste generated outside the region for subsequent shipment to a regional facility;

(g) "Host state" means any party state in which a regional facility is situated or is being developed;

(h) "Institutional control" means those activities carried out by the host state to physically control access to the disposal site following transfer of the license to the owner of the disposal site. These activities include, but are not limited to, environmental monitoring, periodic surveillance, minor custodial care, and other necessary activities at the site as determined by the host state and administration of funds to cover the costs for these activities. The period of institutional control will be determined by the host state but may not be less than one hundred (100) years following transfer of the license to the owner of the disposal site;

(i) "Low-level radioactive waste" or "waste" means, as defined in the Low-Level Radioactive Waste Policy Act (Public Law 96-573), radioactive waste not classified as: high-level radioactive waste; transuranic waste; spent nuclear fuel; or by-product material as defined in Section 11 e.2 of the Atomic Energy Act of 1954, as amended through 1978;

(j) "Management of waste" means the storage, treatment, or disposal of waste;

(k) "Notification of each party state" means transmittal of written notice to the Governor, presiding officer of each legislative body, and any other persons designated by the party state's commission member to receive such notice;

(l) "Party state" means any state which is a signatory party to this compact;

(m) "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private;

(n) "Region" means the area of the party states;

(o) "Regional facility" means a facility which is located within the region and which has been approved by the commission for the benefit of the party states;

(p) "Site" means any property which is owned or leased by a generator and is contiguous to or divided only by a public or private way from the source of generation;

(q) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, or any other territorial possession of the United States;

(r) "Storage" means the holding of waste for treatment or disposal; and

(s) "Treatment" means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render such waste safer for transport or management, amenable for recovery, convertible to another usable material, or reduced in volume.



## ARTICLE III.

## RIGHTS AND OBLIGATIONS

(a) There shall be provided within the region one (1) or more regional facilities which together provide sufficient capacity to manage all wastes generated within the region. It shall be the duty of regional facilities to accept compatible wastes generated in and from party states, and meeting the requirements of this subchapter, and each party state shall have the right to have the wastes generated within its borders managed at such facility.

(b) To the extent authorized by federal law and host state law, a host state shall regulate and license any regional facility within its borders and ensure the extended care of such facility.

(c) Rates shall be charged to any user of the regional facility, set by the operator of a regional facility, and shall be fair and reasonable and be subject to the approval of the host state. Such approval shall be based upon criteria established by the commission.

(d) A host state may establish fees which shall be charged to any user of a regional facility, and which shall be in addition to the rates approved pursuant to section (c) of this article, for any regional facility within its borders. Any fees proposed by the host state shall be subject to a one hundred twenty-day prior notice to the commission with an opportunity to provide comments to the host state. Such fees shall be fair and reasonable and shall provide the host state with sufficient revenue to cover all anticipated present and future costs associated with any regional facility and a reasonable reserve for future contingencies, which are not covered by rates established in section (c) of this article including, but not limited to:

1. The licensure, operation, monitoring, inspection, maintenance, decommissioning, closure, institutional control, and extended care of a regional facility; and

2. Response, removal, remedial action or cleanup deemed appropriate and required by the host state as a result of a release of radioactive or hazardous materials from such regional facility; and

3. Premiums for property and third-party liability insurance; and

4. Protection of the public health, safety, and environment; and

5. Compensation and incentives to the host community;

6. Any amount due from a judgment or settlement involving a property or third-party liability claim for medical expenses and all other damages incurred as a result of personal injury or death, and damages or losses to real or personal property or the environment; and

7. Cost of defending or pursuing liability claims against any party or state.

The fees established pursuant to this section (d) of this article may include incentives for source and volume reduction and may be based on the hazard of the waste. Notwithstanding anything to the contrary in this compact, or in any state constitution, statute, or regulation, to the extent that such fees are insufficient to pay for any costs associated

with a regional facility, including all costs under section (d) of Article III, all party states and any other state(s) whose generators use the regional facility, shall share liability for all such costs. However, there shall be no recovery from the states under section (d) of this article until all available funds, payments or in-kind services have been exhausted including:

- i. Designated low-level radioactive waste funds managed by the host state; and
- ii. Payable proceeds of insurance or surety policies applicable to a regional facility; and
- iii. Proceeds of reasonable collection efforts against the regional facility operator(s); and
- iv. Payments from or in-kind services by generators.

In the event any regional facility operator files or has filed against it a bankruptcy proceeding, then for purposes of determining whether or not reasonable collection efforts have been undertaken, the filing of such proceedings if not dismissed within sixty (60) days of filing shall be considered exhaustion of reasonable collection efforts with respect to such party. Recovery from the states under section (d) of Article III upon satisfaction of the exhaustion of available funds, payments, or in-kind services shall not preclude any state from further recovery of its costs from a facility operator, insurer, or generator. During the period of time that such reasonable collection efforts or exhaustion of available funds, payments, or in-kind services occur, any applicable statutes of limitation with respect to claims against any other parties or states will be deemed tolled and will not run. All costs or liabilities shared by a state shall be shared proportionately by comparing the volume of the waste received at a regional facility from the generators of each state with the total volume of the waste received at a regional facility from all generators.

(e) To the extent authorized by federal law, each party state is responsible for enforcing any applicable federal and state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders and shall adopt practices that will ensure that waste shipments originating within its borders and destined for a regional facility will conform to applicable packaging and transportation laws and regulations.

(f) Each party state has the right to rely on the good faith performance of each other party state.

(g) Unless authorized by the commission, it shall be unlawful after January 1, 1986, for any person:

(1) To deposit, at a regional facility, waste not generated within the region;

(2) To accept, at a regional facility, waste not generated within the region;

(3) To export from the region waste which is generated within the region; and

(4) To transport waste from the site at which it is generated except to a regional facility.



## ARTICLE IV.

## THE COMMISSION

(a) There is hereby established the Central Interstate Low-Level Radioactive Waste Compact Commission. The commission shall consist of one (1) voting member from each party state, except that each host state shall have two (2) at-large voting members and one (1) nonvoting member from the county in which the facility is located. All members shall be appointed according to the laws of each state. The appointing authority of each party state shall notify the commission in writing of the identity of its member and any alternates. Any alternate may act on behalf of the member only in the absence of such member or members. Each state is responsible for the expenses of its member of the commission.

(b) Except for the nonvoting member, each commission member shall be entitled to one (1) vote. Unless otherwise provided herein, no action of the commission shall be binding unless a majority of the total voting membership casts its vote in the affirmative.

(c) The commission shall elect from among its membership a chairman. The commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact.

(d) The commission shall meet at least once a year, and shall also meet upon the call of the chairman, by petition of a majority of the membership, or upon the call of a host state member. All meetings of the commission shall be open to the public with reasonable advance publicized notice given, and such meetings shall be subject to those exceptions provided for within the open meetings laws of the host state. The commission shall adopt bylaws that are consistent in scope and principle with the open meetings law of the host state or, if there is no host state, the open meetings law of the state in which the commission headquarters are located.

(e) The commission may initiate any proceedings or appear as an intervenor or party in interest before any court of law, or any federal, state, or local agency, board, or commission that has jurisdiction over any matter arising under or relating to the terms and provisions of this compact. The commission shall determine in which proceedings it shall intervene or otherwise appear and may arrange for such expert testimony, reports, evidence, or other participation in such proceedings as may be necessary to represent its views.

(f) The commission may establish such committees as it deems necessary for the purpose of advising the commission on any and all matters pertaining to the management of waste.

(g) The commission may employ and compensate a staff limited only to those persons necessary to carry out its duties and functions. The commission may also contract with and designate any person to perform necessary functions to assist the commission. Unless otherwise required by acceptance of a federal grant, the staff shall serve at the commission's pleasure irrespective of the civil service, personnel, or



other merit laws of any of the party states or the federal government and shall be compensated from funds of the commission.

(h) Funding for the commission shall be as follows:

(1) The commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Party states shall equally contribute to the commission budget on an annual basis, an amount not to exceed twenty-five thousand dollars (\$25,000) until surcharges are available for that purpose. Host states shall begin imposition of the surcharges provided for in this section as soon as practicable and shall remit to the commission funds resulting from collection of such surcharges within sixty (60) days of their receipt; and

(2) Each state hosting a regional facility shall annually levy surcharges on all users of such facilities, based on the volume and characteristics of wastes received at such facilities, the total of which:

(A) Shall be sufficient to cover the annual budget of the commission; and

(B) Shall be paid to the commission, provided, however, that each host state collecting such surcharges may retain a portion of the collection sufficient to cover the administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budget of the commission.

(i) The commission shall keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of commission funds and submit an audit report to the commission. Such audit report shall be made a part of the annual report of the commission required by this article.

(j) The commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials, and services, conditional or otherwise from any person, and may receive, utilize, and dispose of same. The nature, amount, and conditions, if any, attendant upon any donation or grant accepted pursuant to this section, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the commission.

(k) (1) Except as otherwise provided herein, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any causal or other relationships. Generators, transporters of waste, owners, and operators of facilities shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

(2) The commission herein established is a legal entity separate and distinct from the party states and shall be so liable for its actions. Liabilities of the commission shall not be deemed liabilities of the party states. Members of the commission shall not be personally liable for actions taken by them in their official capacity.

(l) Any person or party state aggrieved by a final decision of the commission may obtain judicial review of such decisions in the United States District Court in the district wherein the commission maintains

its headquarters by filing in such court a petition for review within sixty (60) days after the commission's final decision. Proceedings thereafter shall be in accordance with the rules of procedure applicable in such court.

(m) The commission shall:

(1) Receive and approve the application of a nonparty state to become a party state in accordance with Article VII;

(2) Submit an annual report to, and otherwise communicate with, the governors and the presiding officers of the legislative bodies of the party states regarding the activities of the commission;

(3) Hear and negotiate disputes which may arise between the party states regarding this compact;

(4) Require of and obtain from the party states, and nonparty states seeking to become party states, data and information necessary to the implementation of commission and party states' responsibilities;

(5) Approve the development and operation of regional facilities in accordance with Article V;

(6) Notwithstanding any other provision of this compact, have the authority to enter into agreements with any person for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import or export waste requires the approval of the commission, including the affirmative vote of any host state which may be affected;

(7) Revoke the membership of a party state in accordance with Articles V and VII;

(8) Require all party states and other persons to perform their duties and obligations arising under this compact by an appropriate action in any form designated in Article IV (e); and

(9) Take such action as may be necessary to perform its duties and functions as provided in this compact.

(n) All files, records, and data of the commission shall be open to reasonable public inspection, regardless of physical form, subject to those exceptions listed within the host state public records law. The commission shall adopt bylaws relating to the availability of files, records, and data of the commission that are consistent in scope and principle with the public records law of the host state or, if there is no host state, the public records law of the state in which the commission headquarters are located.

(o) All decisions of the commission regarding public meetings and public records issues shall be reviewable solely in a United States District Court of a host state or, if there is no host state, then in the state in which the compact commission headquarters are located.

## ARTICLE V.

### DEVELOPMENT AND OPERATION OF REGIONAL FACILITIES

(a) Following the collection of sufficient data and information from the states, the commission shall allow each party state the opportunity to volunteer as a host for a regional facility.

(b) If no state volunteers or if no proposal identified by a volunteer state is deemed acceptable by the commission, based on the criteria in Section (c) of this Article, then the commission shall publicly seek applicants for the development and operation of regional facilities.

(c) The commission shall review and consider each applicant's proposal based upon the following criteria:

(1) The capability of the applicant to obtain a license from the applicable authority;

(2) The economic efficiency of each proposed regional facility, including the total estimated disposal and treatment costs per cubic foot of waste;

(3) Financial assurances;

(4) Accessibility to all party states; and

(5) Such other criteria as shall be determined by the commission to be necessary for the selection of the best proposal, based on the health, safety, and welfare of the citizens in the region and the party states.

(d) The commission shall make a preliminary selection of the proposal or proposals considered most likely to meet the criteria enumerated in Section (c) and the needs of the region.

(e) Following notification of each party state of the results of the preliminary selection process, the commission shall:

(1) Authorize any person whose proposal has been selected to pursue licensure of the regional facility or facilities in accordance with the proposal originally submitted to the commission or as modified with the approval of the commission; and

(2) Require the appropriate state or states or the U.S. Nuclear Regulatory Commission to process all applications for permits and licenses required for the development and operation of any regional facility or facilities within a reasonable period from the time that a completed application is submitted.

(f) The preliminary selection or selections made by the commission pursuant to this article shall become final and receive the commission's approval as a regional facility upon the issuance of a license by the licensing authority. If a proposed regional facility fails to become licensed, the commission shall make another selection pursuant to the procedures identified in this article.

(g) The commission may by a two-thirds ( $\frac{2}{3}$ ) affirmative vote of its membership revoke the membership of any party state which, after notice and hearing shall be found to have arbitrarily or capriciously denied or delayed the issuance of a license or permit to any person authorized by the commission to apply for such license or permit. Revocation shall be in the same manner as provided for in Section (e) of Article VII.

## ARTICLE VI.

### OTHER LAWS AND REGULATIONS

(a) Nothing in this compact shall be construed to:



(1) Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

(2) Prevent the application of any law which is not otherwise inconsistent with this compact;

(3) Prohibit or otherwise restrict the management of waste on the site where it is generated if such is otherwise lawful;

(4) Affect any judicial or administrative proceeding pending on the effective date of this compact;

(5) Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions; and

(6) Affect the generation or management of waste generated by the federal government or federal research and development activities.

(b) No party state shall pass or enforce any law or regulation which is inconsistent with this compact.

(c) All laws and regulations or parts thereof of any party state which are inconsistent with this compact are hereby declared null and void for purposes of this compact. Any legal right, obligation, violation, or penalty arising under such laws or regulations prior to enactment of this compact shall not be affected.

(d) No law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more costly or inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

## ARTICLE VII.

### ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

(a) This compact shall have as initially eligible parties the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, and Oklahoma. Such initial eligibility shall terminate on January 1, 1984.

(b) Any state may petition the commission for eligibility. A petitioning state shall become eligible for membership in the compact upon the unanimous approval of the commission.

(c) An eligible state shall become a member of the compact and shall be bound by it after such state has enacted the compact into law. In no event shall the compact take effect in any state until it has been entered into force as provided for in Section (f) of this article.

(d) Any party state may withdraw from this compact by enacting a statute repealing the same. Unless permitted earlier by unanimous approval of the commission, such withdrawal shall take effect five (5) years after the governor of the withdrawing state has given notice in writing of such withdrawal to each governor of the party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(e) Any party state which fails to comply with the terms of this compact or fulfill its obligations hereunder may, after notice and

hearing, have its privileges suspended or its membership in the compact revoked by the commission. Revocation shall take effect one (1) year from the date such party state receives written notice from the commission of its action. The commission may require such party state to pay to the commission, for a period not to exceed five (5) years from the date of notice of revocation, an amount determined by the commission based on the anticipated fees which the generators of such party state would have paid to each regional facility and an amount equal to that which such party state would have contributed in accordance with Section (d) of Article III, in the event of insufficient revenues. The commission shall use such funds to ensure the continued availability of safe and economical waste management facilities for all remaining party states. Such state shall also pay an amount equal to that which such party state had contributed to the annual budget of the commission if such party state would have remained a member of the compact. All legal rights established under this compact of any party state which has its membership revoked shall cease upon the effective date of revocation; however, any legal obligations of such party state arising prior to the effective date of revocation shall not cease until they have been fulfilled. Written notice of revocation of any state's membership in the compact shall be transmitted immediately following the vote of the commission, by the chairman, to the governor of the affected party state, all other governors of the party states, and the Congress of the United States.

(f) This compact shall become effective after enactment by at least three (3) eligible states and after consent has been given to it by the Congress. The Congress shall have the opportunity to withdraw such consent every five (5) years. Failure of the Congress to withdraw its consent affirmatively shall have the effect of renewing consent for an additional five (5) year period. The consent given to this compact by the Congress shall extend to any future admittance of new party states under Sections (b) and (c) of this article and to the power to ban the exportation of waste pursuant to Article III.

(g) The withdrawal of a party state from this compact under Section (d) of this article or the revocation of a state's membership in this compact under Section (e) of this article shall not affect the applicability of this compact to the remaining party states.

(h) This compact shall be terminated when all party states have withdrawn pursuant to Section (d) of this article.

## ARTICLE VIII.

### PENALTIES

(a) Each party state, consistent with its own law, shall prescribe and enforce penalties against any person for violation of any provision of this compact.

(b) Each party state acknowledges that the receipt by a regional facility of waste packaged or transported in violation of applicable laws

and regulations can result in sanctions which may include suspension or revocation of the violator's right of access to the regional facility.

## ARTICLE IX.

### SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If any provision of this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provision of this compact shall be liberally construed to give effect to the purpose thereof.

**History.** Acts 1983, No. 9, § 1; A.S.A. 1947, § 82-4401; Acts 1991, No. 847, § 1.

**A.C.R.C. Notes.** Acts 1991, No. 847, § 2, provided: "The Central Interstate Low-Level Radioactive Waste Compact, as amended in Section 1 hereof, is hereby ratified and entered into by the state of Arkansas with any and all other states legally joining therein in accordance with its terms. Any state which does not adopt the amendments made herein to the Central Interstate Low-Level Radioactive

Waste Compact may be denied access to a regional facility by the host state."

**U.S. Code.** The Low-Level Radioactive Waste Policy Act referred to in this section was codified as 42 U.S.C. §§ 2021b note, 2021b — 2021d. The present Low-Level Radioactive Waste Policy Act is codified as 42 U.S.C. §§ 2021b — 2021j.

Section 11 e.2 of the Atomic Energy Act of 1954, as amended through 1978, referred to in this section probably refers to 42 U.S.C. § 2014(e).

### 8-8-203. State member and alternate on commission.

Arkansas shall have one (1) member and one (1) alternate member of the Central Interstate Low-Level Radioactive Waste Compact Commission. The member and alternate member shall be appointed by the Governor after receiving the advice of the Joint Committee on Energy. Such appointments shall be for terms of two (2) years.

**History.** Acts 1983, No. 9, § 2; 1985, No. 929, § 1; A.S.A. 1947, § 82-4402.

### 8-8-204. [Repealed.]

**A.C.R.C. Notes.** Acts 2001, No. 783, § 1, provided: "The following are hereby abolished: (1) The Advisory Committee on Accountability; (2) The Crowley's Ridge Trail Commission; (3) The Advisory Council to the Arkansas Natural Heritage Commission of the Department of Arkansas

Heritage; (4) The Advisory Board for Director of the Arkansas High Technology Training Center; (5) The Low-Level Radioactive Waste Advisory Group; (6) The Arkansas Medal of Honor Commission; (7) The Quality Management Board; and (8) The Arkansas Task Force on Timber Land



Assessment.”

**Publisher's Notes.** This section, concerning an advisory group, was repealed by Acts 2001, No. 783, § 2. The section

was derived from Acts 1983, No. 9, § 2; 1985, No. 929, § 1; A.S.A. 1947, § 82-4402; Acts 1999, No. 1164, § 109.

### 8-8-205. Cooperation with commission.

The departments, agencies, and officers of the state and its subdivisions may cooperate with the Central Interstate Low-Level Radioactive Waste Compact Commission in the furtherance of any of its activities pursuant to the Central Interstate Low-Level Radioactive Waste Compact.

**History.** Acts 1983, No. 9, § 4; A.S.A. 1947, § 82-4404.

### 8-8-206. Approval of rates at regional facility.

(a) Pursuant to Article III of the compact, the State Radiation Control Agency is authorized to approve rates to be charged any user of a regional facility located in the State of Arkansas by the operator of the regional facility.

(b) No operator of a regional facility shall charge or alter such rates without the prior approval of the State Radiation Control Agency.

**History.** Acts 1983, No. 9, § 3; A.S.A. 1947, § 82-4403.

**Cross References.** State Radiation Control Agency, § 20-21-206.

## CHAPTER 9 RECYCLING

### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. RECYCLING GENERALLY.
3. RECYCLABLE ITEMS.
4. WASTE TIRES.
5. THE ARKANSAS NEWSPAPER RECYCLING ADVISORY COMMITTEE.
6. MERCURY SWITCH REMOVAL ACT OF 2005.

**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-4 may not apply to subchapters 5 or 6 which were enacted subsequently.

Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public's perception continues, however, primarily because of the similarity in the names of

these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State's regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred

to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the 'Arkansas Department of Environmental Quality' is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise

all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

"(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change."

## RESEARCH REFERENCES

**U. Ark. Little Rock L.J.** Survey—Environmental Law, 14 U. Ark. Little Rock L.J. 779.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

8-9-101. Policy.

8-9-102. Construction.

8-9-103. Conflict with federal laws.

### SECTION.

8-9-104. Definitions.

8-9-105. Penalties and procedures.

## CASE NOTES

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep't of Pollution Control & Ecology, 137 B.R. 735 (E.D. Ark. 1992).

### 8-9-101. Policy.

It is the policy of the State of Arkansas to encourage and promote recycling in order to conserve natural resources, conserve energy, and preserve landfill space. In furtherance of this policy, the State of Arkansas adopts as a goal in the new century the recycling of forty percent (40%) of its municipal solid waste by 2005 and forty-five percent (45%) of its municipal solid waste by 2010, as shall be determined by the Arkansas Department of Environmental Quality by regulation.

**History.** Acts 1991, No. 749, § 1; 2001, No. 94, § 1.

## RESEARCH REFERENCES

**U. Ark. Little Rock L. Rev.** Survey of Legislation, 2001 Arkansas General Assembly, Environmental Law, 24 U. Ark. Little Rock L. Rev. 475.

**8-9-102. Construction.**

The terms and provisions of this chapter are to be liberally construed so as to best achieve and effectuate the policies and purposes hereof.

**History.** Acts 1991, No. 749, § 1.

**8-9-103. Conflict with federal laws.**

If any provision of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter.

**History.** Acts 1991, No. 749, § 1.

**8-9-104. Definitions.**

(a) As used in this chapter:

(1) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Materials in the recycling process" means ferrous and nonferrous metals diverted or removed from the solid waste stream so that they may be reused, as long as:

(A) Those materials are processed or handled using reasonably available processing equipment and control technology, as determined by the Director of the Arkansas Department of Environmental Quality, taking cost into account; and

(B) A substantial amount of the materials are consistently utilized to manufacture a product which otherwise would have been produced using virgin material;

(4) "Municipal solid waste" means waste produced by individuals, public entities, agriculture, and businesses, including yard waste and waste not traditionally included in the recycling rate calculation and that is by its nature eligible for disposal in a municipal solid waste landfill;

(5) "Recyclable materials" or "recyclables" means those materials from the solid waste stream that can be recovered for reuse in present or reprocessed form;

(6) "Recyclable materials collection center" or "collection center" means a facility which receives or stores recyclable materials prior to timely transportation to material recovery facilities, markets for recycling, or disposal;

(7) "Recycling" means the systematic collection, sorting, decontaminating, and returning of waste materials to commerce as commodities for use or exchange;



(8) "Solid waste" shall have the same meaning as provided by § 8-6-702;

(9) "Solid waste board" or "board" means a regional solid waste management board or its successor created under § 8-6-701 et seq.;

(10) "Solid waste district" or "district" means a regional solid waste management district or its successor created under § 8-6-701 et seq.;

(11) "Source separation" means the act or process of removing a particular type of recyclable material from the solid waste stream at the point of generation or at a point under control of the generator for the purpose of collection and recycling; and

(12) "Yard waste" means grass clippings, leaves, and shrubbery trimmings.

(b) For the purposes of this subchapter, "marketing board" means the State Marketing Board for Recyclables.

**History.** Acts 1991, No. 749, § 1; 1993, No. 479, § 2; 1999, No. 1164, § 110; 2001, No. 94, § 2.

## 8-9-105. Penalties and procedures.

(a) Any person who violates any provision of § 8-9-301 et seq. or § 8-9-401 et seq., or of any rule, regulation, or order issued pursuant to this chapter, shall be subject to the same penalty and enforcement provisions as are contained in the Arkansas Solid Waste Management Act, § 8-6-204.

(b) Except as otherwise provided in this chapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules and regulations, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, including, without limitation, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

(c) All rules and regulations adopted under this chapter shall be reviewed by the interim House Committee on Public Health, Welfare, and Labor and the interim Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

**History.** Acts 1991, No. 749, § 1; 1997, No. 179, § 6.

## SUBCHAPTER 2 — RECYCLING GENERALLY

### SECTION.

8-9-201. State Marketing Board for Recyclables.

8-9-202. Powers and duties of the department.

### SECTION.

8-9-203. Recycling by governmental entities.

8-9-204. Purchasing of recyclables by governmental entities.

**Effective Dates.** Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1018, § 8; Apr. 2, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas Code 25-16-903 authorized members of the Advisory Committee on Petroleum Storage Tanks and members of the State Marketing Board of Recyclables to receive a stipend for attending board meetings; that Arkansas Code 8-7-904 and 8-9-201 were enacted prior to Arkansas Code 25-16-903 and do not mention stipends; that the earlier code sections should be amended to parallel the authority granted in § 25-16-903; that this act makes those technical corrections; and that this act should go into effect as soon as possible in order to avoid confusion. It is further found and determined by the General Assembly that the current law concerning expense reimbursement for the State Board of Collection Agencies does not conform to Arkansas Code 25-16-901 et seq.; the State Board of Collection Agencies should be allowed to receive a stipend; and that this act is immediately necessary for the effective operation of the State Board of Collection Agencies. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is

neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1354, § 51; Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19; Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

**8-9-201. State Marketing Board for Recyclables.**

(a)(1) There is established the State Marketing Board for Recyclables to be composed of five (5) members appointed by the Governor and two (2) nonvoting ex officio members.

(2) The Governor shall appoint one (1) member from each of the four (4) United States congressional districts as the districts appear on January 1, 1991. The remaining member shall be appointed from the state at large and shall be a person actively engaged in the business of processing recyclable materials.

(3) The Director of the Arkansas Economic Development Commission or the director's designee shall serve as an ex officio member.

(4) The Director of the Arkansas Department of Environmental Quality or the director's designee shall serve as an ex officio member.

(b) Members appointed by the Governor shall serve for four-year terms.

(c) Vacancies shall be filled by the Governor for the remainder of the term.

(d) Members shall serve without compensation but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(e) The board shall annually select a member to serve as chair.

(f) The board shall meet as necessary to carry out its duties under this subchapter and at the call of the chair.

(g) The Arkansas Department of Environmental Quality, after advice and counsel of the board, shall provide adequate staff to support the activities of the board.

(h) The duties of the board shall include:

(1) Developing a program for the coordination of all existing marketing programs for recyclables;

(2) Developing an overall marketing plan for Arkansas recyclables;

(3) Conducting an inventory of markets for recyclables in Arkansas and the surrounding states;

(4) Working with existing industry to encourage the use of recyclables in their manufacturing processes;

(5) Recruiting new industries that use recyclables in their manufacturing processes;

(6) Maintaining current information on market prices and trends; and

(7) Advising and assisting state and local officials in all areas of recyclables marketing.

**History.** Acts 1991, No. 749, § 1; 1997, No. 1018, § 2; 1997, No. 1354, § 10; 1999, No. 250, § 50; 1997, No. 540, § 12; 1997, No. 1164, § 111; 1999, No. 1508, §§ 3, 7.

**8-9-202. Powers and duties of the department.**

The Arkansas Department of Environmental Quality shall have the power and duty to:



(1) Adopt reasonable rules and regulations to effectuate the purposes of this subchapter;

(2) Promote public education and public awareness of the necessity of supporting waste reduction and recyclable material recovery as an integral part of all solid waste and recyclable materials programs in the state; and

(3) Provide, to the extent practicable, upon request, to state agencies, planning and technical assistance in carrying out their responsibilities under this subchapter.

**History.** Acts 1991, No. 749, § 1.

### **8-9-203. Recycling by governmental entities.**

(a) Beginning December 31, 1991, each state agency, state college or university, county, city, and public school, in cooperation with the Arkansas Department of Environmental Quality and the State Marketing Board for Recyclables shall:

(1) Establish a source separation and recycling program for recyclables generated as a result of agency operations;

(2) Adopt procedures for collection and storage of recyclables; and

(3) Make contractual or other arrangements for transportation and sale of recyclables.

(b) Nothing in this section shall prohibit any state agency, state college or university, county, city, or public school from engaging in, contracting for, or otherwise allowing or arranging for composting of yard waste on property owned or controlled by the governmental entity.

**History.** Acts 1991, No. 749, § 1.

### **8-9-204. Purchasing of recyclables by governmental entities.**

State agencies, cities, counties, and other governmental entities are encouraged to provide for preferential purchasing of products made from recycled materials or products that may be recycled or reused.

**History.** Acts 1991, No. 749, § 1.

## **SUBCHAPTER 3 — RECYCLABLE ITEMS**

#### **SECTION.**

8-9-301. Definitions.

8-9-302. Plastic container labeling.

#### **SECTION.**

8-9-303. Lead-acid batteries.

8-9-304. Used motor oil.

### **8-9-301. Definitions.**

For the purposes of this subchapter:

(1) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic product;

(2) "Lead-acid battery" means a battery with a core of elemental lead and a capacity of six (6) or more volts;

(3) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow;

(4) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type or snap cap, or other closure and has a capacity of sixteen fluid ounces (16 fl. ozs.) or more but less than five gallons (5 gals.);

(5) "Rigid plastic container" means any formed or molded container other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces (8 ozs.) or more but less than five gallons (5 gals.); and

(6) "Single use" means filled one (1) time.

**History.** Acts 1991, No. 749, § 1; 1993, No. 579, § 1.

### **8-9-302. Plastic container labeling.**

(a)(1) Beginning July 1, 1992, a person shall not distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the product is labeled with a code indicating the plastic resin used to produce the bottle or container. Rigid plastic bottles or rigid plastic containers with labels and basecaps of a different material shall be coded by their basic material.

(2) The code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three (3) arrows, with the apex of each point of the triangle at the midpoint of each arrow rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three (3) arrows curved at their midpoints, shall depict a clockwise path around the code number.

(3) The numbers and letters used shall be as follows:

- (A) PETE (polyethylene terephthalate);
- (B) HDPE (high density polyethylene);
- (C) V (vinyl);
- (D) LDPE (low density polyethylene);
- (E) PP (polypropylene);
- (F) PS (polystyrene); and
- (G) OTHER.

(b) The Arkansas Department of Environmental Quality shall maintain a list of the label codes provided pursuant to this section and shall provide a copy of that list to any person upon request.

**History.** Acts 1991, No. 749, § 1.

**8-9-303. Lead-acid batteries.**

(a) A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the state shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased, used lead-acid batteries from customers, if offered by customers; and

(2) Post written notices which must be at least eight and one-half inches by eleven inches (8½" x 11") in size and must contain the universal recycling symbol and the following language:

(A) "It is illegal to discard a motor vehicle or marine battery.";

(B) "Recycle your used batteries.";

(C) "State law requires us to accept used lead-acid batteries for recycling, in exchange for new lead-acid batteries purchased."; and

(D) "When you purchase any new lead-acid battery, you will be charged an additional ten dollars (\$10.00) unless you return a used lead-acid battery for refund within thirty (30) days."

(b)(1) Each person who purchases a lead-acid battery at retail shall be assessed a surcharge of ten dollars (\$10.00) per battery by the retailer unless for each battery purchased:

(A) That person returns a used lead-acid battery to the retailer within thirty (30) days of the date of his or her surcharged purchase;

(B) That person provides a valid police report which indicates that a lead-acid battery has been stolen from that person; or

(C) The purchase is for installation in an item which was sold without a lead-acid battery and there is no used battery for that item which could be returned, and that person signs a written statement containing the following language:

"I attest that this purchase of a lead-acid battery is for installation in an item which was sold without a lead-acid battery, and there is no used battery for this item which can be returned."

(2) A retailer shall refund the ten-dollar surcharge to any purchaser of a new lead-acid battery who presents a used lead-acid battery to the retailer with a receipt for the purchase of a new lead-acid battery from that retailer within that thirty-day period.

(3) A retailer may keep any lead-acid battery surcharge moneys which are not properly claimed within thirty (30) days after the date of sale.

(c) The Arkansas Department of Environmental Quality shall produce, print, and distribute the notices required by this section to all places where lead-acid batteries are offered for sale at retail.

(d) In performing its duties under this section, the department may inspect any place, building, or premises governed by this section.

(e)(1) Any person selling new lead-acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new lead-acid batteries purchased, used lead-acid batteries from customers if offered by customers.



(2) A person accepting lead-acid batteries in transfer from a lead-acid battery retailer shall be allowed a period not to exceed ninety (90) days to remove lead-acid batteries from the retail point of collection.

(f) No person shall place a used lead-acid battery in municipal solid waste, discard, or otherwise dispose of a lead-acid battery, except by delivery to:

(1) A lead-acid battery retailer or wholesaler;

(2) A collection or recycling facility authorized under the law of the State of Arkansas; or

(3) A secondary lead smelter permitted by the United States Environmental Protection Agency.

(g) No lead-acid battery retailer shall dispose of a used lead-acid battery except by delivery to the agent of a lead-acid battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by the United States Environmental Protection Agency, or to a collection or recycling facility authorized under the law of the State of Arkansas or to a secondary lead smelter permitted by the United States Environmental Protection Agency.

(h) An owner or operator of a solid waste landfill shall not knowingly accept for disposal a lead-acid battery.

(i) Each lead-acid battery improperly disposed of or accepted for disposal shall constitute a separate violation.

(j) The requirements for retailers contained in subsections (a) and (b) of this section shall not apply to a person whose retail sales of lead-acid batteries are not in the ordinary course of business.

(k) Nothing in this section shall be construed to prohibit the collection, transportation, or disposal of lead-acid batteries mixed or commingled with solid waste by any person engaged in the collection, transportation, or disposal of solid waste, unless it can be demonstrated that the person knew or should have known that such lead-acid batteries had been mixed or commingled with the solid waste collected, transported, or disposed of, and unless it can be demonstrated that it is economically and environmentally feasible to remove and recover the lead-acid batteries from the solid waste collected, transported, or disposed of.

**History.** Acts 1991, No. 749, § 1; 1993, No. 579, § 2.

**Publisher's Notes.** Acts 1991, No. 749,

§ 1 provided: "The provisions of this section shall apply beginning July 1, 1992."

### 8-9-304. Used motor oil.

No later than December 31, 1992, the Arkansas Pollution Control and Ecology Commission shall adopt, after notice and public hearing, reasonable regulations which are protective of the public health and environment for the collection, storage, and disposal, reuse, or recycling of used motor oil.

**History.** Acts 1991, No. 749, § 1.

## SUBCHAPTER 4 — WASTE TIRES

## SECTION.

8-9-401. Legislative intent.

8-9-402. Definitions.

8-9-403. Operation of waste tire sites —  
Requirements and prohibited activities.

## SECTION.

8-9-404. Waste tire fees.

8-9-405. Waste tire grants.

8-9-406. [Repealed.]

**Effective Dates.** Acts 1993, No. 518, § 6; Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that all solid waste districts do not have waste tire collection centers and waste tire processing facilities; that some waste tires must be transported across district lines for recycling and processing; that whole waste tires must be processed prior to transportation across district lines; that it is an undue hardship on those persons transporting whole waste tires to process them prior to delivery at a permitted processing facility; and that this act allows transportation of whole waste tires across district lines to a permitted processing facility. Therefore an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1254, § 9; July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to the state's ability to provide efficient and effective programs in the protection of the state's environment as mandated through the activities of the Department of Pollution Control

and Ecology. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1999, No. 775, § 5; Mar. 22, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the law concerning the waste tire grant program is inadequate for the protection of the public. Regional Solid Waste Management Districts are dependent on adequate grant funding, which this bill would provide. Without adequate funding, the Districts' efforts to manage waste tires, which can result in a blight on the countryside and hazardous and unhealthy conditions, would be hindered. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

**8-9-401. Legislative intent.**

The purpose of this subchapter is to protect the public health and the state's environmental quality by setting and implementing standards to be followed in the hauling, storage, recycling, and disposal of waste tires.

**History.** Acts 1991, No. 749, § 1.

**8-9-402. Definitions.**

As used in this subchapter:

(1) "Automobile tire" means any motor vehicle tire with a load rating of "F" or lower;

(2) "Compacted and baled tires" means tires that have been mechanically compressed and tied with interlocking wrappings that have been approved by the Arkansas Department of Environmental Quality;

(3) "Load rating" means the system of trade designations that identifies the weight carrying capacity range of a tire;

(4) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated primarily on the roads of this state:

(A) Used to transport persons or property; and

(B) Propelled by power other than muscular power;

(5) "Specialty tire" means any tire not specifically covered by any other definition in this section including without limitation traction engines, road rollers, vehicles that run only on a track, bicycles, and farm tractors and trailers;

(6) "Tire" means a continuous solid or pneumatic rubber covering that is used for encircling a wheel;

(7) "Tire manufacturer" means a manufacturing operation engaged in the final assembly of the basic components of a tire;

(8) "Truck tire" means any motor vehicle tire with a rim size greater than nineteen inches (19") and a load rating of "F" or higher including without limitation a wide-base or extra-wide single tire;

(9) "Used tire" means a tire that is repairable or retreadable for its original intended purpose, but shall not include a tire being held for ninety (90) days or less for the purpose of retreading or repairing the tire;

(10) "Waste tire" means a tire that is no longer repairable or retreadable or no longer suitable for its original intended purpose because of wear, damage, or defect;

(11) "Waste tire collection center" means a site where used or waste tires are collected from the public prior to being offered for recycling and where fewer than three thousand (3,000) loosely stored tires are kept on the site on any given day or up to a maximum of ten thousand (10,000) tires which have been compacted or baled;

(12) "Waste tire processing facility" means a site where equipment is used to cut, chip, grind, or otherwise alter used or waste tires;

(13) "Waste tire site" means a site at which one thousand (1,000) or more unpermitted used or waste tires are accumulated, whether loosely stored or compacted and baled or a combination thereof;

(14) "Waste tires originating from a tire manufacturer" means those new tires which originate from a tire assembly process and are determined by the tire manufacturer to be either defective or unfit for use on a motor vehicle; and

(15) "Wide-base tire" or "extra-wide single tire" means a tire approximately four hundred fifty-five millimeters (455 mm) wide that is used



on a motor vehicle in which the front axle load exceeds the load capacity of a truck tire.

**History.** Acts 1991, No. 749, § 1; 1993, No. 518, § 1; 1995, No. 1315, § 1; 1997, No. 1292, § 1; 1999, No. 1164, § 112; 2003, No. 1304, § 1; 2011, No. 744, § 1.

**Amendments.** The 2011 amendment substituted “rating of ‘F’” for “rating of

‘E’” in (1); in (8), substituted “nineteen inches (19”) for “twenty inches (20”)” and “rating of ‘F’” for “rating of ‘E’,” and added “including without limitation wide-base or extra-wide single tire”; and added (15).

### **8-9-403. Operation of waste tire sites — Requirements and prohibited activities.**

(a)(1) Within six (6) months after July 15, 1991, the owner or operator of any waste tire site shall provide the Arkansas Department of Environmental Quality and the applicable solid waste management district with:

(A) Information concerning the site’s location and size and the approximate number of waste tires that are accumulated at the site; and

(B) A written plan specifying a method and time schedule, subject to approval by the department, for the removal, disposal, or recycling of the tires.

(2) The owner or operator shall implement the approved plan according to its schedule.

(b) A person shall not cause or permit the open burning of tires in the state.

(c)(1) A person shall not maintain a waste tire site.

(2) It is illegal for any person to dispose of used or waste tires or portions of used or waste tires in the state unless the tires are disposed of for processing or collected for processing at a permitted waste tire processing facility, a waste tire collection center, or a permitted solid waste disposal facility.

(3)(A) Whole tires shall not be deposited into a landfill as a method of ultimate disposal unless shredded or split into sufficiently small parts to assure their proper disposal.

(B) Only automobile tires that have been processed by cutting, shredding, or splitting into sufficiently small parts to assure proper disposal or automobile tires processed by baling may be disposed of at a disposal site that has a permit issued for a landfill designed and operated as a waste tire monofill.

(C) Whole truck tires may be placed in a waste tire monofill in accordance with the facility’s permit without cutting, shredding, splitting, or baling.

(D) Suitable processed-tire materials may be used in the construction of daily and intermediate cover systems for all landfills if the use is:

(i) Authorized by the department;

(ii) Shown to not present a threat to human health and the environment; and

(iii) Shown to control disease, vectors, fires, odors, blowing litter, or scavenging.

(4) A person who leases or owns real property may use waste tires for soil erosion abatement and drainage purposes in accordance with procedures approved by the Arkansas Pollution Control and Ecology Commission and each solid waste management district or to secure covers over silage, hay, straw, or agricultural products.

(d)(1) The commission shall adopt regulations to carry out the provisions of this section.

(2) The regulations shall:

(A) Provide for the administration of waste tire processing facility permits and a fee for each permit which shall not exceed two hundred fifty dollars (\$250) annually;

(B) Provide for the administration of waste tire transporter licenses, waste tire collection center permits, and a fee for each permit which shall not exceed two hundred fifty dollars (\$250) annually;

(C) Set standards for waste tire processing facilities, waste tire collection centers, and waste tire transporters;

(D) Establish procedures for administering the waste tire grant program and issuing grants; and

(E) Authorize the final disposition of waste tires at a permitted solid waste disposal facility, provided the tires have been cut into sufficiently small parts to assure their proper disposal.

(e) A waste tire processing facility permit or a collection center permit, or both, is not required for:

(1) A tire retreading business where fewer than one thousand (1,000) waste tires are kept on the business premises;

(2) A business that in the ordinary course of business removes tires from motor vehicles if fewer than one thousand (1,000) of those tires are kept on the business premises;

(3) A retail tire-selling business that is serving as a waste tire collection center if fewer than one thousand (1,000) waste tires are kept on the business premises; or

(4) A site designated by a regional solid waste management district serving as a waste tire collection center where fewer than one thousand (1,000) tires are kept on the premises.

(f) The commission and each solid waste management district shall encourage the voluntary establishment of waste tire collection centers at retail tire-selling businesses, waste tire processing facilities, and solid waste disposal facilities, for the deposit of used and waste tires generated in the State of Arkansas, except those generated by a tire manufacturer.

(g)(1) Waste tires originating from a tire manufacturer shall be disposed of at either a permitted waste tire collection center or a permitted waste tire processing facility for a fee to be established by either of those facilities if disposed of in the State of Arkansas.

(2) Records of the disposition of the waste tires originating from a tire manufacturer shall be maintained by that manufacturer for a

period of at least three (3) years and shall be available for review by the department.

(h) The commission shall establish guidelines and adopt regulations for a tire manifest system to monitor the sale and distribution of tires among tire dealers, waste tire collectors, waste tire processing facilities, and waste tire disposal facilities.

**History.** Acts 1991, No. 749, § 1; 1993, No. 519, § 1; 1995, No. 1315, § 2; 1997, No. 1292, § 2; 2005, No. 961, § 1; 2005, No. 1951, § 1; 2011, No. 744, § 2.

**A.C.R.C. Notes.** As originally enacted by Acts 1991, No. 749, § 1, subsection (c) of this section began: “on or after July 1, 1992.”

**Amendments.** The 2011 amendment

substituted “state” for “State of Arkansas” in (b); deleted “Three (3) years after August 12, 2005” at the beginning of (c)(3)(B); and, in (c)(3)(C), deleted “that exceed a rim size of twenty inches (20”) and a load rating of ‘E’ or higher” following “tires” and substituted “facility’s” for “facilities.”

### 8-9-404. Waste tire fees.

(a)(1) There shall be imposed a fee upon the sale of each new automobile tire and truck tire sold at retail.

(2)(A) The fee shall be charged by the tire retailer to the person who purchases a new automobile tire or truck tire.

(B) No fee shall be collected on any motor vehicle tire sold by a tire retailer for resale under subdivision (a)(8) of this section.

(3)(A) The fee shall be imposed at the rate of two dollars (\$2.00) per automobile tire or truck tire.

(B) An additional fee shall be imposed at the rate of three dollars (\$3.00) per truck tire.

(C) Solid waste management districts may charge a fee for the collection and disposal of specialty tires.

(D) It shall be the responsibility of the tire retailer to accept at no additional cost to the customer other than the fees imposed under this section any or all used or waste tires for which a new replacement tire was purchased.

(E) For any used or waste tires collected through a tire retailer’s business, the retailer shall ensure that the tires are transported by a licensed hauler to a permitted waste tire collection center, a solid waste management facility, a waste tire processing facility, or a registered used tire dealer.

(4) Except for the fees for the collection and disposal of specialty tires, the fees shall be added to the total cost to the purchaser at retail after all applicable sales taxes on the tires have been computed and shall be separately stated on the invoice or bill of sale.

(5)(A) Except for the fees for the collection and disposal of specialty tires, the fees imposed shall be paid monthly to the Director of the Department of Finance and Administration.

(B) However, the tire retailer may retain five percent (5%) of the fee levied by subdivisions (a)(3)(A) and (B) of this section as an administrative cost.



(6)(A) The fees remitted in subdivision (a)(5)(A) of this section shall be collected by the director and shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(B)(i) Each tire retailer shall file a return with the director and with the applicable solid waste management district on or before the twentieth of each month showing the total fees collected for both automobile and truck tires during the preceding calendar month and shall remit the fees with the return.

(ii) The director shall prescribe the form and contents of the return. At a minimum, the form must:

(a) Indicate separately the number of automobile tires and the number of truck tires sold for which a fee was collected; and

(b) Indicate which solid waste management district the tires were sold in.

(7) The fees imposed by this section do not apply to recapped tires or tires included as part of the equipment of a new motor vehicle.

(8) The terms "sold at retail" and "retail sales" do not include the sale of new tires to a person solely for the purpose of resale, provided the subsequent retail sale in this state is subject to the fee.

(b) The Department of Finance and Administration shall deposit the proceeds of the waste tire fee into the State Treasury as special revenues and shall credit the proceeds to the following special funds created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State in the following proportions:

(1) A total of ninety-two percent (92%) of the proceeds to be deposited into the Waste Tire Grant Fund; and

(2) A total of eight percent (8%) of the proceeds to be deposited into the Arkansas Department of Environmental Quality Fee Trust Fund as created in § 8-1-105.

(c) In addition to all moneys appropriated by the General Assembly to the Waste Tire Grant Fund, there shall be deposited in the Waste Tire Grant Fund any federal government moneys designated to enter the Waste Tire Grant Fund, any moneys received by the state as a gift or donation to the Waste Tire Grant Fund, and all interest upon money deposited in the Waste Tire Grant Fund.

(d)(1) Except as provided in subdivision (d)(2) of this section, the Waste Tire Grant Fund shall be administered by the Arkansas Department of Environmental Quality, which shall authorize grants from the Waste Tire Grant Fund according to the provisions of this subchapter.

(2)(A) The fees collected under subdivision (a)(3)(B) of this section shall be remitted to the solid waste management district in which the truck tires were disposed.

(B) The distribution of fees collected under subdivision (a)(3)(B) of this section shall be based on the number of truck tires disposed in the prior calendar year.

(e) For the purposes of this section, "proceeds of the fee" means all funds collected and received by the Department of Finance and Administration under this section and interest and penalties on delinquent waste tire fees.

(f)(1) In addition to the fee imposed on new tires, a fee shall be imposed at the rate of one dollar (\$1.00) on all waste automobile and truck tires that are imported into Arkansas.

(2) The fee imposed shall be paid by the importer to the Department of Finance and Administration in accordance with the Arkansas Tax Procedure Act, § 26-18-101 et seq., and any regulations promulgated by the Department of Finance and Administration.

(3) The Department of Finance and Administration shall deposit the proceeds of this fee into the State Treasury as special revenues and shall credit the proceeds to the special fund created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State to be known as the "Waste Tire Grant Fund", as described in subsection (b) of this section.

(g) The Arkansas Department of Environmental Quality is authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the Arkansas Department of Environmental Quality in such manner as may be necessary to support the programs of the Arkansas Department of Environmental Quality as directed by the Governor and the General Assembly.

**History.** Acts 1991, No. 749, § 1; 1993, No. 1254, §§ 4, 5; 1995, No. 1315, § 3; 1997, No. 1292, § 3; 1999, No. 1164, §§ 113-115; 2003, No. 1304, §§ 2, 3; 2005, No. 1822, § 1.

**A.C.R.C. Notes.** As enacted, the first sentence of subsection (a) began "From and after July 1, 1991."

As enacted, subsection (e) read as follows: "In addition to the fee imposed on new tires, beginning July 1, 1991, a fee shall be imposed at the rate of one dollar (\$1.00) on all waste tires that are imported into Arkansas."

Pursuant to § 1-2-207, this section is set out above as amended by Acts 1993, No. 1254. The subsection now designated as (f) was also amended by Acts 1993, No. 529, § 1, to read as follows:

"(d)(1) In addition to the fee imposed on new tires, a fee shall be imposed at the rate of one dollar (\$1.00) on all waste tires that are imported into Arkansas.

"(2) Subject to authorization by the Pollution Control and Ecology Commission

this fee shall not apply if the waste tires are being imported to a permitted waste tire processing facility.

"(A) The fee imposed shall be paid by the importer to the Department of Finance and Administration in accordance with § 26-18-101 et seq. and any regulations promulgated by the Department of Finance and Administration.

"(B) The Department of Finance and Administration shall deposit the proceeds of this fee in the State Treasury as special revenues and shall credit the proceeds to the special fund created on the books of the State Treasurer, the State Auditor, and the Chief Fiscal Officer of the State to be known as the 'Waste Tire Grant Fund,' as described in subsection (b) of this section."

**Publisher's Notes.** Acts 1993, No. 1254, § 5, codified as subsection (g) of this section, is also codified as §§ 8-1-103(5), 8-1-105(c), and 8-7-226(d).

## CASE NOTES

**Cited:** Southeast Ark. Landfill, Inc. v. State ex rel. Ark. Dep't of Pollution Con-

trol & Ecology, 137 B.R. 735 (E.D. Ark. 1992).

**8-9-405. Waste tire grants.**

(a) The Arkansas Department of Environmental Quality shall, by July 1, 1992, establish a program to make waste tire grants to regional solid waste management boards which desire, individually or collectively, to:

(1) Construct or operate or contract for the construction or operation of a waste tire processing facility and equipment purchases therefor;

(2) Contract for a waste tire processing facility service within or outside the regional solid waste management district;

(3) Remove or contract for the removal of waste tires from illegal waste tire sites within the regional solid waste management district;

(4) Perform or contract for the performance of research designed to facilitate waste tire recycling;

(5) Establish waste tire collection centers at solid waste disposal facilities, waste tire processing facilities, or waste tire generators, that shall accept automobile and truck or specialty tires from registered tire dealers at no charge, provided the waste tires had a waste tire management fee collected at the time of retail sale;

(6) Establish at least one (1) waste tire collection center within the district that may accept all tires for which a management fee was not previously collected, including, but not limited to, mining, farming, or off-the-road vehicle tires. Any fee charged for the tires must not be in excess of the costs of properly removing and disposing of the tires;

(7) Provide incentives for establishing privately operated waste tire collection centers for the public. This provision does not pertain to off-the-road tires that are exempt from the tire management fee;

(8) Establish educational programs designed to inform the public of available recycling options and programs;

(9) Fund additional transportation costs incurred as a result of using waste tire disposal alternatives as a preference over landfill disposal; or

(10) Use moneys for other purposes approved by the department.

(b) Regional solid waste management boards may join together, pooling their financial resources, when utilizing their funds for the purposes described in this section.

(c)(1) Grant funds for waste tire management programs shall be distributed to the regional solid waste management boards.

(2) To be eligible to receive waste tire management grant funds, regional solid waste management boards shall provide the department with quarterly financial and progress reports, as determined by the department.

(3) Distribution of grant funds shall be based upon moneys available in the fund and upon approved quarterly financial reports. The reports shall show funds expended on waste tire projects during the previous quarter and expenses expected on waste tire projects during the next quarter and any other information as determined by the department. Accordingly, and upon department approval, quarterly distributions shall be made to the boards.



(4) Any formula for distribution of grant funds that takes into account population data shall use data from the latest available federal decennial census.

(d) The department shall provide technical assistance, upon request, to a regional solid waste management board desiring assistance in applying for waste tire grants or choosing a method of waste tire management which would be an eligible use of the grant funds.

(e) The department shall expand the waste tire grant program by setting aside a portion, not to exceed ten percent (10%) of the Waste Tire Grant Fund available, other than those fees established in § 8-9-404(a)(2)(B), to regional solid waste management districts, in order to provide supplemental aid wherever needed.

**History.** Acts 1991, No. 749, § 1; 1995, No. 1315, § 4; 1997, No. 1292, § 4; 1999, No. 775, § 1; 2003, No. 1304, § 4.

### 8-9-406. [Repealed.]

**Publisher's Notes.** This section, concerning statewide disposal facilities for waste tires, was repealed by Acts 1995, No. 1315, § 7. The section was derived from Acts 1991, No. 749, § 1; 1993, No. 518, § 2.

## SUBCHAPTER 5 — THE ARKANSAS NEWSPAPER RECYCLING ADVISORY COMMITTEE

### SECTION.

- 8-9-501. Creation.
- 8-9-502. Members.
- 8-9-503. Purpose.

### SECTION.

- 8-9-504. Schedule of compliance.
- 8-9-505. Attainment of goals.
- 8-9-506. Achievement of purpose.

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**A.C.R.C. Notes.** References to "this chapter" in subchapters 1-4 may not apply to this subchapter which was enacted subsequently.

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### 8-9-501. Creation.

Recognizing that the recycling of newsprint, the use of recycled content newsprint, and the use of soy-based ink is a mutual concern to the State of Arkansas and the Arkansas newspaper industry, there is hereby created the Arkansas Newspaper Recycling Advisory Committee, which shall act in an advisory capacity to the State Marketing Board for Recyclables.

**History.** Acts 1993, No. 991, § 1.

**8-9-502. Members.**

The Director of the Arkansas Department of Environmental Quality shall appoint an Arkansas Newspaper Recycling Advisory Committee consisting of:

(1) The Chief of the Marketing Division of the Arkansas Department of Environmental Quality or his or her designee;

(2) The Executive Director of the Arkansas Press Association or his or her designee; and

(3)(A) At least six (6) members representing the Arkansas newspaper industry and newsprint manufacturers doing business in Arkansas.

(B) Provided, however, these members shall be selected from a list of names of potential members to be provided by the President of the Board of Directors of the Arkansas Press Association.

**History.** Acts 1993, No. 991, § 2; 1995, No. 658, § 1; 1999, No. 1164, § 116.

**8-9-503. Purpose.**

The Arkansas Newspaper Recycling Advisory Committee shall meet as necessary to monitor the use of recycled content newsprint and soy-based ink in the state in relation to the following goals:

(1) To increase the use of recycled content newsprint in Arkansas;

(2) To increase the use of soy-based ink in Arkansas;

(3) To increase the demand for recycled newsprint in Arkansas;

(4) To increase the availability of recycled content newsprint in Arkansas; and

(5) To identify, develop, and advance initiatives to recycle and reuse old newspapers.

**History.** Acts 1993, No. 991, § 3.

**8-9-504. Schedule of compliance.**

The Arkansas Newspaper Recycling Advisory Committee shall develop a schedule of compliance for newspapers printed on newsprint in Arkansas to phase in increased percentages of recycled fiber in their newsprint.

**History.** Acts 1993, No. 991, § 4.

**8-9-505. Attainment of goals.**

The Arkansas Newspaper Recycling Advisory Committee shall formulate a plan for an annual reporting of the progress toward the stated goals of this subchapter. Provided, however, that attainment of the percentage goals established by the committee shall be dependent upon recycled newsprint being available to Arkansas newspapers at a rea-

sonable price, in reasonable quality, and in reasonable quantity as determined by the committee.

**History.** Acts 1993, No. 991, § 5.

**8-9-506. Achievement of purpose.**

In cooperation with the State Marketing Board for Recyclables, the Arkansas Newspaper Recycling Advisory Committee shall develop and implement a plan to achieve the purposes of this subchapter.

**History.** Acts 1993, No. 991, § 6.

**SUBCHAPTER 6 — MERCURY SWITCH REMOVAL ACT OF 2005**

SECTION.

- 8-9-601. Title.
- 8-9-602. Purpose.
- 8-9-603. Definitions.
- 8-9-604. Mercury minimization plan.
- 8-9-605. Plan approval and implementation.
- 8-9-606. Removal and proper management of mercury-added vehicle components.

SECTION.

- 8-9-607. Annual reporting.
- 8-9-608. Design for recycling.
- 8-9-609. Rules and regulations — Authority of Arkansas Pollution Control and Ecology Commission.
- 8-9-610. Penalties and enforcement.

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**A.C.R.C. Notes.** References to “this chapter” in subchapters 1-4 may not apply to this subchapter which was enacted subsequently.

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**8-9-601. Title.**

This subchapter shall be known and may be cited as the “Mercury Switch Removal Act of 2005”.

**History.** Acts 2005, No. 649, § 1.

**8-9-602. Purpose.**

The purpose of this subchapter is to reduce the quantity of mercury in the environment by removing mercury switches from end-of-life vehicles and by creating a collection and recovery program for mercury switches removed from end-of-life vehicles in the State of Arkansas.

**History.** Acts 2005, No. 649, § 1.

**8-9-603. Definitions.**

As used in this subchapter:



(1) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of the total number of mercury switches available for removal from end-of-life vehicles;

(2) "Department" means the Arkansas Department of Environmental Quality;

(3) "Director" means the Director of the Arkansas Department of Environmental Quality;

(4) "End-of-life vehicle" means a vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling;

(5) "Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that is the last person in the production or assembly process of a new vehicle that utilizes mercury switches, or, in the case of an imported vehicle, the importer or domestic distributor of the vehicle;

(6) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from end-of-life vehicles that is prepared pursuant to § 8-9-604;

(7) "Mercury switch" means each mercury-containing capsule, commonly known as a "bullet", that is part of a convenience light switch assembly or part of an antilock braking system assembly installed in a vehicle. An antilock braking system assembly may contain more than one (1) mercury switch;

(8) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company or trust, venture, or municipal, state, or federal government or agency or any other legal entity, however organized;

(9) "Scrap recycling facility" means a fixed location where machinery and equipment are used for processing and manufacturing scrap metal into prepared grades and whose principal products are scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes;

(10) "Vehicle" means any passenger automobile or passenger car, station wagon, truck, van, or sport utility vehicle with a gross vehicle weight rating of less than twelve thousand pounds (12,000 lbs.); and

(11) "Vehicle recycler" means an individual or entity engaged in the business of acquiring, dismantling, or destroying six (6) or more end-of-life vehicles in a calendar year for the primary purpose of the resale of their parts.

**History.** Acts 2005, No. 649, § 1.

### **8-9-604. Mercury minimization plan.**

(a) Within ninety (90) days after August 12, 2005, every manufacturer of vehicles sold within this state, individually or as part of a group, shall develop in consultation with the Arkansas Department of Environmental Quality a mercury minimization plan prepared pursuant to this section and shall submit the mercury minimization plan to

the Director of the Arkansas Department of Environmental Quality for review and approval pursuant to § 8-9-605.

(b) The mercury minimization plan prepared and submitted pursuant to this section shall include the following at a minimum:

(1)(A) Information identifying the make, model, and year of vehicles, including current or anticipated future production models that may contain one (1) or more mercury switches, a description of the mercury switches, a system to mark vehicles to be processed for shredding or crushing to indicate the presence or absence of mercury switches, the location of these mercury switches, and the safe and environmentally sound methods for removal of mercury switches from end-of-life vehicles.

(B) To the extent a manufacturer is uncertain as to the content of a switch installed during the manufacture of a vehicle, the mercury minimization plan shall presume that the switch is a mercury switch;

(2) Educational materials to assist a vehicle recycler or a scrap recycling facility in undertaking a safe and environmentally sound method for the removal of the mercury switches from end-of-life vehicles, including information on the hazards related to mercury and the proper handling of mercury;

(3) A proposal for the method of storage or disposal of the mercury switches, including the method of packaging and shipping mercury switches to authorized recycling, storage, or disposal facilities;

(4) A proposal for the storage of mercury switches collected and recovered from end-of-life vehicles if environmentally appropriate management technologies are not available; and

(5) A plan for implementing and financing the system in accordance with subsection (d) of this section.

(c) To the extent practicable, a mercury minimization plan shall use the existing end-of-life vehicle recycling infrastructure. If the existing end-of-life vehicle recycling infrastructure is not used, the mercury minimization plan shall include the reasons for establishing a separate infrastructure.

(d)(1) A mercury minimization plan shall provide for the financing of the removal, collection, and recovery system for mercury switches installed in vehicles manufactured by the manufacturer and its predecessors and affiliates as provided in this subsection.

(2) These costs shall be borne by the manufacturers of vehicles sold in the state, ensuring that additional financial burdens are not placed on automobile dealers or businesses dealing with end-of-life vehicles. The manufacturers shall develop a method that ensures the prompt payment to vehicle recyclers, scrap recycling facilities, and the department for costs associated with mercury switch removal and disposal. Costs shall include, but not be limited to, the following:

(A) A minimum of five dollars (\$5.00) for each mercury switch removed by a vehicle recycler pursuant to § 8-9-606(a) as partial compensation for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch;

(B) A minimum of five dollars (\$5.00) for each mercury switch removed by a scrap recycling facility pursuant to § 8-9-606(b) as partial compensation for the labor and other costs incurred by a scrap recycling facility in the removal of the mercury switch;

(C) One dollar (\$1.00) for each mercury switch removed by a vehicle recycler pursuant to § 8-9-606(a) or by a scrap recycling facility pursuant to § 8-9-606(b) as partial compensation to the department for costs incurred in administering and enforcing the provisions of this subchapter;

(D) Packaging in which to transport mercury switches to recycling, storage, or disposal facilities;

(E) Shipping of mercury switches to recycling, storage, or disposal facilities;

(F) Recycling, storage, or disposal of the mercury switches;

(G) The preparation and distribution to vehicle recyclers and scrap recycling facilities of the educational materials required pursuant to subdivision (b)(2) of this section; and

(H) Maintenance of all appropriate record-keeping systems.

(e) Within thirty (30) days after August 12, 2005, every manufacturer of vehicles sold within the state, individually or as part of a group, shall provide to vehicle recyclers and scrap recycling facilities containers suitable for storing mercury switches until such time that vehicle recyclers and scrap recycling facilities can be reimbursed pursuant to this section.

(f) Manufacturers of vehicles sold within the state shall provide vehicle recyclers or scrap recycling facilities with reimbursement for each mercury switch in the amount established pursuant to this section regardless of when these switches were removed from the vehicles if the vehicle recyclers or scrap recycling facilities maintain the records required by § 8-9-606.

(g) Manufacturers shall indemnify, defend, and hold harmless vehicle recyclers and scrap recycling facilities for any liabilities arising from the release of the mercury from the mercury-added components after the components are transferred to the manufacturer or its agent or contractor.

**History.** Acts 2005, No. 649, § 1.

### **8-9-605. Plan approval and implementation.**

(a)(1) Within one hundred twenty (120) days after receipt of a mercury minimization plan, the Director of the Arkansas Department of Environmental Quality shall approve, disapprove, or conditionally approve the entire mercury minimization plan. The director may solicit input from representatives of vehicle recyclers, scrap recycling facilities, and other stakeholders as the director deems appropriate.

(2)(A) If the entire mercury minimization plan is approved, the manufacturer shall begin implementation within thirty (30) days after receipt of approval or as otherwise agreed to by the director.



(B) If the entire mercury minimization plan is disapproved, the director shall inform the manufacturer as to the reasons for the disapproval. The manufacturer shall have thirty (30) days thereafter to submit a new mercury minimization plan.

(3)(A) The director may approve those parts of a mercury minimization plan that meet the requirements of § 8-9-604 and disapprove the parts that do not comply with the requirements of § 8-9-604.

(B) The manufacturer shall implement the approved parts of the mercury minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by the director and submit a revised mercury minimization plan for the disapproved parts within thirty (30) days after receipt of notification of the disapproval of the director.

(C) The director shall review and approve, conditionally approve, or disapprove a revised mercury minimization plan within thirty (30) days after receipt.

(4)(A) If at the conclusion of the time period of one hundred twenty (120) days after receipt of a mercury minimization plan the director has neither approved nor disapproved the mercury minimization plan pursuant to subdivision (a)(2)(A) or subdivision (a)(2)(B) of this section, the mercury minimization plan shall be considered to be conditionally approved.

(B) Subject to any modifications required by the director, a manufacturer shall implement a conditionally effective mercury minimization plan within thirty (30) days after receipt of approval or as otherwise agreed to by the director.

(b) At the conclusion of a time period two hundred forty (240) days after August 12, 2005, the director shall reserve the right to complete on behalf of a manufacturer any portion of a mercury minimization plan that has not been approved pursuant to this section.

(c) The director may review a mercury minimization plan approved pursuant to this section and recommend modifications to the plan at any time upon a finding that the approved mercury minimization plan is deficient or not accomplishing the purposes set out in this subchapter in any material respect.

**History.** Acts 2005, No. 649, § 1.

### **8-9-606. Removal and proper management of mercury-added vehicle components.**

(a) Commencing thirty (30) days after the approval or conditional approval of a mercury minimization plan pursuant to § 8-9-605, a vehicle recycler that sells, gives, or otherwise conveys ownership of an end-of-life vehicle to a scrap recycling facility for recycling shall remove all mercury switches identified in the approved mercury minimization plan from the end-of-life vehicle prior to delivery to a scrap recycling facility, unless a mercury switch is inaccessible due to significant damage to the vehicle in the area surrounding the location of the

mercury switch, in which case the damage shall be noted on the normal business records of the vehicle recycler who delivered the end-of-life vehicle to the scrap recycling facility.

(b) Notwithstanding subsection (a) of this section, a scrap recycling facility may agree to accept an end-of-life vehicle containing mercury switches that has not been intentionally flattened, crushed, or baled, in which case the scrap recycling facility shall be responsible for removing the mercury switches identified in the mercury minimization plan approved pursuant to § 8-9-605 before the end-of-life vehicle is intentionally flattened, crushed, baled, or shredded.

(c)(1) A vehicle recycler or scrap recycling facility that removes mercury switches pursuant to subsection (a) or subsection (b) of this section shall maintain records documenting the number of:

(A) Mercury switches collected;

(B) End-of-life vehicles containing mercury switches;

(C) End-of-life vehicles processed for recycling;

(D) The makes and models of vehicles from which mercury switches were removed; and

(E) Switches collected from each make.

(2) These records shall be made available for review by the Arkansas Department of Environmental Quality upon the request of the department.

(d) No person shall represent that mercury switches have been removed from an end-of-life vehicle being sold, given, or otherwise conveyed for recycling if that person has not removed the mercury switches or arranged with another person to remove the mercury switches.

(e) Upon removal, mercury switches shall be collected, stored, transported, and otherwise handled in accordance with the:

(1) Mercury minimization plan approved pursuant to § 8-9-605; and

(2) Provisions of the rules and regulations concerning universal waste adopted by the department pursuant to the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(f) No scrap recycling facility or other person that receives an intentionally flattened, crushed, or baled end-of-life vehicle shall be in violation of this subchapter if a mercury switch is found in the vehicle after its acquisition.

**History.** Acts 2005, No. 649, § 1.

### **8-9-607. Annual reporting.**

(a) One (1) year after the implementation of a mercury minimization plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Arkansas Department of Environmental Quality concerning the implementation of the mercury minimization plan. The report shall include, but need not be limited to, the following:

(1) A detailed description and documentation of the capture rate achieved, with the goal of achieving a mercury switch capture rate of at least ninety percent (90%), consistent with the principle that mercury switches shall be recovered unless the mercury switch is inaccessible due to significant damage to the end-of-life vehicle in the area surrounding the location of the mercury switch;

(2) A description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation in the event that a mercury switch capture rate of at least ninety percent (90%) is not achieved;

(3) The number of mercury switches collected, the number of end-of-life vehicles containing mercury switches, the number of end-of-life vehicles processed for recycling, and a description of how the mercury switches were managed; and

(4) A description of the amounts paid to cover the costs of implementing the mercury minimization plan.

(b) The director may discontinue the requirement for the annual report pursuant to subsection (a) of this section upon a finding that mercury switches in end-of-life vehicles manufactured by a particular manufacturer no longer pose a significant threat to the environment or to public health.

**History.** Acts 2005, No. 649, § 1.

### **8-9-608. Design for recycling.**

(a) One (1) year after the implementation of a mercury minimization plan approved pursuant to § 8-9-605, and annually thereafter, a manufacturer subject to § 8-9-604 shall report individually or as part of a group to the Director of the Arkansas Department of Environmental Quality concerning the steps being taken by manufacturers to design vehicles and their components for recycling. The report shall include, but need not be limited to, the following:

(1) A list of all vehicle components that contain mercury included in the manufacturer's vehicles in each of the previous three (3) model years, the current model year, and the next upcoming model year;

(2) Design changes that each manufacturer has implemented or is implementing to reduce or eliminate from its vehicles all sources of mercury listed in compliance with subdivision (a)(1) of this section, the amount of any reductions, and the year in which mercury will be eliminated from each of the vehicle components listed in compliance with subdivision (a)(1) of this section;

(3) Policies that each manufacturer has implemented to ensure that its vehicles are designed to be recycled in a safe, cost effective, and environmentally sound manner using existing technologies and infrastructures;

(4) A listing of all:

(A) Complaints and reports that the manufacturer has received within the last twelve (12) months from vehicle recyclers, scrap



recycling facilities, government entities, or organizations representing any of the persons; or

(B) Other facts and circumstances that have made the manufacturer aware that the manufacturer's vehicles contain vehicle components or are designed in such a way that present environmental risks that make it uneconomical to recycle the vehicles or components; and

(5) The design or manufacturing changes that the manufacturer has implemented or is implementing to reduce or remove any environmental risks listed in compliance with subdivision (a)(4) of this section and the year in which design changes will eliminate the environmental risk listed in compliance with subdivision (a)(4) of this section.

(b) The Arkansas Department of Environmental Quality may conduct hearings from time to time as the director deems appropriate to evaluate the steps manufacturers are taking to design for recycling and to recommend additional legislative action as may be appropriate in order to promote vehicle recycling for the purposes of the preservation of scarce resources and the safe and efficient reduction of solid waste.

**History.** Acts 2005, No. 649, § 1.

### **8-9-609. Rules and regulations — Authority of Arkansas Pollution Control and Ecology Commission.**

The Arkansas Pollution Control and Ecology Commission may adopt rules and regulations to effectuate and implement the purposes and intent of this subchapter and the powers and duties of the Arkansas Department of Environmental Quality.

**History.** Acts 2005, No. 649, § 1.

### **8-9-610. Penalties and enforcement.**

(a) Any person who violates any provisions of this subchapter or any rule or order issued pursuant to this subchapter shall be subject to the same penalty and enforcement provisions as are contained in § 8-6-204.

(b) Except as otherwise provided in this subchapter, the procedure of the Arkansas Pollution Control and Ecology Commission for issuance of rules, conduct of hearings, notice, power of subpoena, review of action on permits, right of appeal, presumptions, finality of actions, and related matters shall be as provided in §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229 of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., including, without limitation, §§ 8-4-205, 8-4-210, 8-4-212 — 8-4-214, and 8-4-218 — 8-4-229.

**History.** Acts 2005, No. 649, § 1.

# CHAPTER 10

## POLLUTION PREVENTION

### SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ARKANSAS POLLUTION PREVENTION ACT.
3. SPECIFIC POLLUTION PREVENTION MEASURES.

**A.C.R.C. Notes.** Acts 1997, No. 1219, § 1, provided: “Legislative intent. With Act 1230 of 1991, the General Assembly sought to delineate the respective responsibilities of the Arkansas Pollution Control and Ecology Commission and the Arkansas Department of Pollution Control & Ecology. Confusion on these issues in the public’s perception continues, however, primarily because of the similarity in the names of these entities. The purpose of this Act is to achieve the legislative intent of Act 1230 of 1991 and to definitively assign the executive, adjudicatory, and rulemaking roles for the State’s regulatory functions concerning protection of the environment.”

Acts 1997, No. 1219, § 2, provided: “Arkansas Department of Pollution Control & Ecology’ renamed to ‘Arkansas Department of Environmental Quality’.

“(a) Effective March 31, 1999, the ‘Arkansas Department of Pollution Control & Ecology’ or ‘Department,’ as it is referred to or empowered throughout the Arkansas Code Annotated, is hereby renamed. In its place, the ‘Arkansas Department of Environmental Quality’ is hereby established, succeeding to the general powers and responsibilities previously assigned to the Arkansas Department of Pollution Control & Ecology. The Director of the Arkansas Department of Pollution Control & Ecology is directed to identify and revise all inter-agency agreements, financial instruments, funds, and other necessary legal documents in order to effect this change by March 31, 1999.

“(b) Nothing in this Act shall be construed as impairing the powers and authorities of the Arkansas Department of Pollution Control and Ecology prior to the effective date of the name change.”

### RESEARCH REFERENCES

**Am. Jur.** 61A Am. Jur. 2d, Pollution Control, § 46 et seq.

**C.J.S.** 39A C.J.S., Health & Environment, § 115 et seq.

### SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

### SUBCHAPTER 2 — ARKANSAS POLLUTION PREVENTION ACT

#### SECTION.

- 8-10-201. Title.  
8-10-202. Legislative intent.  
8-10-203. Definitions.

#### SECTION.

- 8-10-204. Hierarchy of waste minimization.  
8-10-205. Powers and duties.

#### 8-10-201. Title.

This subchapter may be cited as the “Arkansas Pollution Prevention Act”.

**History.** Acts 1993, No. 1273, § 1.

### 8-10-202. Legislative intent.

(a) The General Assembly finds that the timely development of a comprehensive pollution prevention and waste minimization plan for the prevention and reduction of the amount of solid, hazardous, and industrial wastes produced within the state is essential to determine the scope and need for off-site waste management facilities.

(b)(1) The General Assembly further finds that it is essential to ensure that the state fulfills its responsibilities under the federal Superfund Amendments and Reauthorization Act of 1986 to provide for the availability of adequate capacity for the management of wastes by implementing a comprehensive pollution prevention plan.

(2) This plan should encourage the minimization of wastes produced by means of source reduction, process change, feed stock substitution, recycling, and reuse for both hazardous and nonhazardous waste streams.

(3) Waste that is generated should be minimized to the greatest practicable extent, treated on-site, and stored and recycled or disposed of so as to protect human health and the environment.

(c) The purpose of this subchapter is to prevent pollution, minimize the amount of solid, hazardous, and industrial wastes generated, and conserve energy within the state as expeditiously as possible.

**History.** Acts 1993, No. 1273, § 1.

erally as 10 U.S.C. § 2701 et seq., 42

**U.S. Code.** The Superfund Amendments and Reauthorization Act of 1986, referred to in this section, is codified gen-

U.S.C. § 6991 et seq., and 42 U.S.C. § 9601 et seq.

### 8-10-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Disposal" means the discharge, deposit, injection, dumping, spilling, leakage, or placing of any waste into or on any land or water in whatever manner so that such waste or any constituent thereof might enter the environment or be emitted into the air or discharged into any waters of the state, including groundwaters;

(2) "Generation" means the act or process of producing waste materials;

(3) "Generator" means any individual, business, government agency, or any other organization that generates waste;

(4) "Hazardous waste" means hazardous waste as defined by the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and regulations issued pursuant thereto;

(5) "Person" means any individual, corporation, company, firm, partnership, association, trust, joint-stock company, state agency, government instrumentality or agency, institution, or county, city, town, or municipal authority or trust, venture, or any other legal entity, however organized;

(6)(A) "Pollution prevention" means any action taken by industry, government, or individual consumers to conserve natural resources



while providing and using needed products in a manner which prevents or reduces the generation, disposal, or release of pollutants to the environment.

(B) "Pollution prevention" does not include dewatering, dilution, or evaporation prior to handling, release, storage, treatment, or disposal of hazardous waste; and

(7) "Source reduction" or "waste minimization" means the reduction or elimination of waste at the source, usually within a manufacturing process, including process modification, feed stock substitutions, improvement in feed stock purity, housekeeping and management practices, increases in the efficiency of machinery, on-site closed-loop recycling, or any other action which demonstrably reduces the amount and toxicity of the waste exiting the production process.

**History.** Acts 1993, No. 1273, § 1.

### **8-10-204. Hierarchy of waste minimization.**

It is the policy of the state to adhere to the following hierarchy of waste minimization and management:

- (1) Reduce waste production at the source;
- (2) Recover and reuse resources and wastes;
- (3) Recycle on-site or, if this is not feasible, off-site;
- (4) Treat wastes to reduce volume and toxicity, including incineration; and
- (5) Dispose of any remaining wastes in a manner which serves to protect the quality of air, water, and land resources.

**History.** Acts 1993, No. 1273, § 1.

### **8-10-205. Powers and duties.**

(a) The Governor shall designate the state agency or agencies which shall have the following powers and duties pursuant to this subchapter to:

- (1) Compile, organize, and make available for distribution information on pollution prevention technologies and procedures;
- (2) Compile and make available for distribution to business and industry a list of expert private consultants on pollution prevention technologies and procedures and a list of researchers at state universities providing assistance in pollution prevention activities;
- (3) Sponsor and conduct conferences and individualized workshops and seminars on pollution prevention for specific classes of business or industry;
- (4) Conduct feasibility analyses for innovative pollution prevention technologies and procedures;
- (5) Facilitate and promote the transfer of pollution prevention technologies and procedures between business and industries;
- (6) Develop, where appropriate, and distribute for voluntary implementation pollution prevention plans for the major classes of industry

that generate and subsequently treat, store, or dispose of waste in the state;

(7) Develop and make available for distribution recommended waste audit procedures and protocols for utilization by business and industry in conducting internal waste audits;

(8) Provide on-site assistance upon request to business and industry for the purpose of identifying potential techniques for pollution prevention and assisting in conducting internal waste audits;

(9) Compile and make available for distribution information on available tax benefits for the implementation of pollution prevention technologies and procedures by an industry or business;

(10) Establish goals for voluntary waste reduction within the state, including the identification of key industries and businesses which should receive priority assistance;

(11) Identify governmental and nongovernmental impediments to pollution prevention;

(12) Develop the necessary information base and data collection programs to assist in establishing program priorities and evaluating the progress of reducing wastes;

(13) Develop training programs and materials for state and local regulatory personnel and private industry designed to inform them about pollution prevention practices and their applicability to industry;

(14) Participate in existing state, federal, and industrial networks of individuals and groups actively involved in pollution prevention activities;

(15) Establish an award program for outstanding examples of success in pollution prevention and waste minimization; and

(16) Publicize to business and industry and participate in and support waste exchange programs.

**History.** Acts 1993, No. 1273, § 1.

### SUBCHAPTER 3 — SPECIFIC POLLUTION PREVENTION MEASURES

#### SECTION.

8-10-301. Sale of certain batteries prohibited — Disposal requirements.

8-10-302. Construction of motor vehicle racing facility — Requirement.

#### SECTION.

8-10-303. Permit requirement.

8-10-304. Motor vehicle racing facilities in certain municipalities.

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**Effective Dates.** Acts 1995, No. 1191, § 44: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the

effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm

upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 1015, § 43: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of

this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

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### **8-10-301. Sale of certain batteries prohibited — Disposal requirements.**

(a) Alkaline manganese batteries manufactured on or after January 1, 1996, shall not be sold in this state if the battery contains any intentionally introduced mercury, as distinguished from mercury which may be incidentally present in other materials, except, however, that the limitation on mercury content in alkaline manganese button cells shall be twenty-five milligrams (25 mg) of mercury per button cell.

(b) Zinc carbon batteries manufactured on or after January 1, 1994, shall not be sold in this state if the battery contains any intentionally introduced mercury.

(c)(1) It shall be illegal to sell consumer mercuric oxide button cell batteries in this state on or after January 1, 1994.

(2) As used in this subsection, the term "consumer mercuric oxide button cell batteries" refers to batteries which contain mercuric oxide electrodes, resemble buttons in size and shape, and are used in consumer products such as hearing aids.

(d)(1)(A) On or after January 1, 1994, no person shall dispose of mercuric oxide batteries in municipal solid waste or in medical waste.

(B) Mercuric oxide batteries are subject to disposal or recycling under the provisions of or pursuant to the provisions of the Arkansas Hazardous Waste Management Act of 1979, § 8-7-201 et seq.

(2) As used in this subsection, the term "mercuric oxide batteries" refers to batteries containing mercuric oxide electrodes, except that consumer mercuric oxide button cell batteries are excluded from the definition.

(e) The Arkansas Pollution Control and Ecology Commission may promulgate, modify, or repeal rules or regulations as necessary or appropriate to implement or effectuate the purpose and intent of this section.

(f) Any person violating any provision of this section or of any rule, regulation, or order issued pursuant to this section shall be subject to



the same penalty and enforcement provisions as are contained in the Arkansas Solid Waste Management Act, § 8-6-204.

**History.** Acts 1993, No. 952, § 1.

### **8-10-302. Construction of motor vehicle racing facility — Requirement.**

(a)(1) Due to the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility may be constructed in this state after passage of this act without the consent of at least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters within three (3) miles of the outside boundary of the proposed facility.

(2)(A) Such consent shall be accomplished by signing petitions that shall be filed with the city clerk if the facility is to be located within the boundaries of any city or town or with the county clerk if the facility is to be located wholly or partially outside the boundaries of any city or town.

(B) The petitions shall indicate:

(i) The name;

(ii) The residence address or, if a nonresident property owner, the address or legal description of the property located within the three-mile area; and

(iii) The date of the signature.

(C)(i) The petitions must be verified pursuant to § 7-9-109.

(ii) Signatures shall become invalid sixty (60) days after signing.

(iii) It shall be the duty of the county clerk or city clerk, as the case may be, to determine the sufficiency of the signatures and to certify the sufficiency or insufficiency of the signatures in writing to the Arkansas Department of Environmental Quality.

(b) As used in this section, “motor vehicle racing facility” means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

**History.** Acts 1995, No. 1191, § 40; No. 1015.  
1997, No. 551, § 2; 1997, No. 1015, § 35;  
1999, No. 674, § 1; 2005, No. 1409, § 1.

**A.C.R.C. Notes.** Pursuant to § 1-2-207, the repeal of this section by Acts 1997, No. 551, § 2 was superseded by the amendment of this section by Acts 1997,

**Publisher’s Notes.** In reference to the term “passage of this act” in subdivision (a)(1), Acts 1995, No. 1191 was approved on April 11, 1995, and became effective July 1, 1995.

### **8-10-303. Permit requirement.**

(a)(1)(A) Due to the noise pollution and air pollution from the racing vehicles and traffic congestion caused by motor vehicle racing facilities, no motor vehicle racing facility shall be constructed in this state after passage of this section without the consent of at least seventy-five percent (75%) of the property owners and seventy-five percent (75%) of the registered voters within three (3) miles of the outside

boundary of the proposed facility and without an annual permit issued by the Arkansas Department of Environmental Quality.

(B) The consent shall be required for the initial annual permit only.

(2)(A) Consent shall be accomplished by signing petitions which shall be filed with the city clerk if the facility is to be located within the boundaries of any city or town or with the county clerk if the facility is to be located wholly or partially outside the boundaries of any city or town.

(B) The petitions shall indicate:

(i) The name;

(ii) The residence address or, if a nonresident property owner, the address or legal description of the property located within the three-mile area; and

(iii) The date of the signature.

(C)(i) The petitions must be verified pursuant to § 7-9-109.

(ii) Signatures shall become invalid sixty (60) days after signing.

(iii) It shall be the duty of the county clerk or city clerk, as the case may be, to determine the sufficiency of the signatures and to certify the sufficiency or insufficiency of the signatures in writing to the department.

(3)(A)(i) Once the sufficiency of the petitions is determined, the persons or entity proposing and constructing a motor vehicle racing facility after August 1, 1997, shall seek the approval of and issuance of an annual permit from the department. The department's approval shall be sought by filing a permit application with the department.

(ii) Initial permit applications for new facilities to be constructed shall have attached a written proposal for the motor vehicle facility containing the substance of the proposed facility, including:

(a) A description of the types of motor vehicles proposed for racing at the facility;

(b) The maximum projected noise level of the racing vehicles;

(c) A description of the kinds of races and the types of buildings, stands, or other physical plant proposed for the facility;

(d) Estimates of traffic counts and numbers of spectators; and

(e) Any other relevant permit information as may be determined necessary for the permit application by the department.

(B) For the initial permit application for new facilities to be constructed, the department shall conduct a public hearing on the proposed motor vehicle racing facility. The department shall set a date for the public hearing to be held on the proposed facility permit which shall not be less than thirty (30) days after the filing of the initial permit application. The hearing under this subdivision (a)(3)(B) for the initial permit may be adjourned and continued if necessary. In its discretion, the department may hold public hearings for the renewal of any permits as is necessary. Any interested persons may appear and contest the granting of the approval or renewal of the facility permit. Affidavits in support of or against the proposed facility

or a permit renewal, which may be prepared and submitted, shall be examined by the department.

(C) After the hearing for the initial permit or upon application for the renewal of its annual permit, if the department shall be satisfied that the benefits of the motor vehicle racing facility are sustained by proof and outweigh its impact by the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, then the department shall grant the initial permit approving the proposed facility or shall renew approval to the permitted or existing facility. Renewal of an annual permit may also be denied if:

(i) The racing facility is determined to be in violation of any standards under which the permit was issued;

(ii) The racing facility is constructed or is being operated in a manner that is materially different than was represented during the petition process; or

(iii) Fraud, misrepresentation, or false statement of facts was used to obtain signatures for the petition process.

(D) If any material changes, additions, or improvements are made to the motor vehicle racing facility, the permit shall be amended accordingly, and the department may reconsider the approval of the permit.

(E) The Arkansas Pollution Control and Ecology Commission shall have the authority to promulgate all necessary rules and regulations to implement this section, including the authority to set a permit fee to recover the cost of issuing the permit.

(b) As used in this section, "motor vehicle racing facility" means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

(c) Within one (1) year of August 1, 1999, each motor vehicle racing facility constructed in Arkansas after January 1, 1995, shall apply for and shall receive an initial annual permit to operate its motor vehicle racing facility. Thereafter, upon the annual renewal date for its permit, the motor vehicle racing facility constructed after January 1, 1995, shall apply annually for renewal of its permit.

**History.** Acts 1997, No. 551, § 1; 1999, No. 674, § 2; 1999, No. 1164, §§ 117, 118; 2005, No. 1409, § 2.

**Publisher's Notes.** In reference to the

term "passage of this act" in subdivision (a)(1), Acts 1995, No. 1191, was approved on April 11, 1995, and became effective July 1, 1995.

#### **8-10-304. Motor vehicle racing facilities in certain municipalities.**

(a) Sections 8-10-302 and 8-10-303 do not apply to any motor vehicle racing facilities located in a county having a population between eighty thousand (80,000) and ninety thousand (90,000) according to the 1990 Federal Decennial Census and that are:

(1) South of a navigable waterway that traverses the state; or



(2) More than two (2) miles from an interstate highway, public or private school, or church facility in place at the time of the original permit application.

(b)(1)(A) A person or entity proposing and constructing a motor vehicle racing facility under subsection (a) of this section shall seek the approval of and issuance of an annual permit from the Arkansas Department of Environmental Quality.

(B) The department's approval shall be sought by filing a permit application with the department, which shall contain a written proposal for the facility containing the substance of the proposed facility, including:

(i) A description of the types of motor vehicles proposed for racing at the facility;

(ii) The maximum projected noise level of the racing vehicles;

(iii) A description of the kinds of races and the types of buildings, stands, or other physical plants proposed for the facility;

(iv) Estimates of traffic counts and numbers of spectators; and

(v) Any other relevant permit information as may be determined necessary for the permit application by the department.

(2)(A)(i) For the initial permit application for new facilities to be constructed, the department shall conduct a public hearing on the proposed facility.

(ii) The department shall set a date for the public hearing to be held on the proposed facility permit which shall not be fewer than thirty (30) days after the filing of the initial permit application.

(iii) The hearing under this subdivision (b)(2) for the initial permit may be adjourned and continued if necessary.

(B)(i) The department, in its discretion, may hold public hearings for the renewal of any permits as is necessary.

(ii) Any interested persons may appear and contest the granting of the approval or renewal of the facility permit.

(iii) Affidavits in support of or against the proposed facility or a permit renewal, which may be prepared and submitted, shall be examined by the department.

(3) After the hearing for the initial permit or upon application for the renewal of its annual permit, if the department is satisfied that the benefits of the facility are sustained by proof and outweigh its impact by the noise, air pollution, and traffic congestion caused by motor vehicle racing facilities, then the department shall grant the initial permit approving the proposed facility or shall renew approval to the permitted or existing facility.

(4) Renewal of an annual permit may also be denied if:

(A) The facility is determined to be in violation of any standards under which the permit was issued; or

(B) The facility is constructed or is being operated in a manner that is materially different than was represented during the initial application process.

(5) If any material changes, additions, or improvements are made to the facility, the permit shall be amended accordingly, and the department may reconsider the approval of the permit.

(6) The Arkansas Pollution Control and Ecology Commission shall have the authority to promulgate any and all necessary rules and regulations to implement this section, including the authority to set a permit fee to recover the cost of issuing the permit.

(c) Each facility constructed in an area under this section that applies for and receives an initial annual permit to operate its facility shall thereafter apply annually for renewal of its permit.

(d) For the purposes of this section, “motor vehicle racing facility” means any facility designed and used for competitive racing by automobiles or trucks that are modified for racing.

(e) Due to the noise pollution and air pollution from the racing vehicles and traffic congestion caused by motor vehicle racing facilities, no facility shall be permitted or constructed under this section within one (1) mile of the boundary of another county.

**History.** Acts 2001, No. 1413, § 1; rewrote (a) and (b)(1)(A); and substituted 2009, No. 1287, §§ 1–3. “one (1) mile” for “three (3) miles” in (e).

**Amendments.** The 2009 amendment

# CHAPTER 11

## ENVIRONMENTAL REGULATORY FLEXIBILITY

SECTION.  
8-11-101. Title.  
8-11-102. Purpose.

SECTION.  
8-11-103. Regulatory flexibility.

### 8-11-101. Title.

This chapter may be known and may be cited as the “Arkansas Environmental Regulatory Flexibility Act”.

**History.** Acts 1999, No. 500, § 1.

### 8-11-102. Purpose.

(a) The improvement of the environment of the State of Arkansas is a matter of concern to all citizens of this state, and existing environmental law plays a critical role in protecting the environment.

(b) Environmental protection could be enhanced by authorizing innovative advances in environmental regulatory methods.

(c) Arkansas should develop environmental regulatory methods that:

- (1) Encourage facility owners and operators to assess the pollution they emit or cause, directly and indirectly, to the air, water, and land;
- (2) Encourage facility owners and operators to innovate, set measurable and verifiable goals, and implement the most effective pollution prevention, source reduction, or other pollution reduction strategies for

their particular facilities while complying with verifiable and enforceable pollution limits;

(3) Reward facility owners and operators that reduce pollution to levels below those required by applicable law; and

(4) Reduce the time and money spent by agencies and facility owners and operators on paperwork and other administrative tasks that do not benefit the environment.

**History.** Acts 1999, No. 500, § 1.

**8-11-103. Regulatory flexibility.**

(a)(1) The Arkansas Department of Environmental Quality, by order of the Director of the Arkansas Department of Environmental Quality consistent with the purposes of this chapter, may approve requests which allow an applicant to use alternative methods to comply with an Arkansas Pollution Control and Ecology Commission rule regarding the control or abatement of pollution.

(2) However, the applicant must propose to control or abate pollution by an alternative method, provided the alternative method is:

(A) Quantifiable, measurable, and enforceable;

(B) At least as protective of the environment and the public health as the method prescribed by the requirement or commission rule that would otherwise apply; and

(C) Consistent with federal law.

(b) As a part of the approval process, the director shall provide for public notice and for public participation in considering requests under this section.

(c) The director's order must provide a specific description of the alternative method and must condition any approval on compliance with the method as the order prescribes.

(d) The department may establish a reasonable fee for applications under this section.

(e) A violation of an order issued under this section is punishable as if it were a violation of the previously effective means of compliance.

**History.** Acts 1999, No. 500, § 1.

**CHAPTER 12**

**NATURAL RESOURCES DAMAGES TRUST FUND**

**SECTION.**

8-12-101. Title.

8-12-102. Definitions.

8-12-103. Natural Resources Damages  
Trust Fund.

8-12-104. Natural Resources Damages  
Advisory Board.

**SECTION.**

8-12-105. Duties of the Department of  
Finance and Administration.



**8-12-101. Title.**

This chapter may be known and may be cited as the “Natural Resources Damages Trust Fund Act”.

**History.** Acts 1999, No. 895, § 1.

**8-12-102. Definitions.**

As used in this chapter, unless the context otherwise requires:

- (1) “Board” means the Natural Resources Damages Advisory Board;
- (2) “Fund” means the Natural Resources Damages Trust Fund created by this chapter; and
- (3) “Natural resources” means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of Arkansas or local government.

**History.** Acts 1999, No. 895, § 1.

**8-12-103. Natural Resources Damages Trust Fund.**

(a)(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the “Natural Resources Damages Trust Fund”.

(2) In addition to all moneys appropriated by the General Assembly to the fund, there shall be deposited in the fund all payments collected by the state for restoration, rehabilitation, replacement, or acquisition of natural resources, any moneys received by the state as a gift or donation to the fund or any federal moneys designated to enter the fund, and all interest earned upon moneys deposited in the fund.

(3) All moneys received into the fund shall be utilized for natural resource restoration, rehabilitation, replacement, or acquisition.

(b) All expenditures from the fund shall be authorized by the Natural Resources Damages Advisory Board according to the provisions of this chapter and the requirements or conditions of any orders, settlement agreements, gifts, or donations.

**History.** Acts 1999, No. 895, § 1.

**Cross References.** Natural Resources Damages Trust Fund, § 19-5-1107.

**8-12-104. Natural Resources Damages Advisory Board.**

(a) There is hereby created and established a Natural Resources Damages Advisory Board.

(b) The board shall be composed of seven (7) members:

- (1) One (1) member shall be a representative from the Arkansas Farm Bureau Federation, Inc.;
- (2) One (1) member shall be a representative from the Arkansas Natural Resources Commission;

(3) One (1) member shall be a representative from the Arkansas Forestry Commission;

(4) One (1) member shall be a representative from the Arkansas Department of Environmental Quality;

(5) One (1) member shall be a representative from the Arkansas State Game and Fish Commission;

(6) One (1) member shall be a representative of the Department of Arkansas Heritage; and

(7) One (1) member shall be a representative of the Attorney General's office.

(c) Members of the board shall serve without compensation.

(d) The board shall have the following powers and duties:

(1) To develop projects for the restoration, rehabilitation, replacement, and acquisition of natural resources;

(2) To request proposals for natural resource-related projects;

(3) To review and evaluate proposals for natural resource-related projects;

(4) To select projects for the restoration, rehabilitation, replacement, and acquisition of natural resources; and

(5) To approve payments from the Natural Resources Damages Trust Fund for projects and other activities relating to the restoration, rehabilitation, replacement, and acquisition of natural resources.

**History.** Acts 1999, No. 895, § 1.

## **8-12-105. Duties of the Department of Finance and Administration.**

(a) The Department of Finance and Administration shall administer the fund, as authorized by the National Resources Damages Advisory Board.

(b) The department shall undertake the following activities, as authorized by the board:

(1) Develop and issue requests for proposals;

(2) Award grants for projects relating to natural resource restoration, rehabilitation, replacement, and acquisition;

(3) Contract for services; and

(4) Make payments from the Natural Resources Damages Trust Fund.

**History.** Acts 1999, No. 895, § 1.

## **CHAPTER 13**

### **MANAGEMENT ORGANIZATION**

#### **SECTION.**

8-13-101. Purpose.

8-13-102. Authority to adopt alternative organization.

#### **SECTION.**

8-13-103. Requirements for comprehensive analysis and strategic planning.

**Effective Dates.** Acts 1999, No. 1316, § 5: Apr. 12, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is vital that a management process be executed to improve our ability to protect and enhance the environment through the development and use of measurable environmental indicators. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of

the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and veto is overridden, it shall become effective on the date the last house overrides the veto."

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### 8-13-101. Purpose.

It is recognized that:

(1) The improvement of the environment and the management of environmental concerns within the State of Arkansas are matters of interest to all citizens of this state;

(2) Environmental protection and improvement could be enhanced by authorizing the Director of the Arkansas Department of Environmental Quality to design and establish a management organization which incorporates specific goals for environmental protection and uses environmental indicators to measure agency performance; and

(3) The director should execute a management process which:

(A) Creates an integrated agency information system;

(B) Organizes the Arkansas Department of Environmental Quality according to business function;

(C) Utilizes environmental indicators to measure progress in protecting and enhancing the environment;

(D) Employs a collaborative public involvement process to define the environmental indicators to be used to measure environmental enhancement; and

(E) Establishes a performance-based financial management system that links the funding of agency activities to environmental results.

**History.** Acts 1999, No. 1316, § 1.

### 8-13-102. Authority to adopt alternative organization.

(a) The Director of the Arkansas Department of Environmental Quality, with the advice and consent of the Governor, may establish any number of divisions for the conduct of environmental affairs of the state and may prescribe the functions and duties of each division.

(b) Provided, however, that:

(1) All functions and duties prescribed by a grant agreement with an entity of the federal government shall be maintained for the duration of the agreement;



(2)(A) This section does not limit any provision of state law directing or requiring the Arkansas Department of Environmental Quality to carry out any function or provide any service.

(B) However, nothing in this section shall be construed to prevent the reassignment of functions or services assigned by state law where reassignment does not alter the obligation of the department to continue providing such function or service;

(3) Such reorganization shall be based on a comprehensive analysis of all of the functions and duties administered by the department and the development of a ten-year strategic plan of department operations; and

(4) The conduct of such comprehensive analysis and the development of a strategic plan shall be financed by an appropriation or authorization of the General Assembly for these specific purposes.

**History.** Acts 1999, No. 1316, § 1.

### **8-13-103. Requirements for comprehensive analysis and strategic planning.**

(a) Any reorganization of the functions and duties for the conduct of environmental affairs through the provisions of this chapter shall be based on a comprehensive analysis of the existing operations of the Arkansas Department of Environmental Quality and the development of a ten-year strategic plan for department operations. Such strategic plan shall be reviewed and updated on an annual basis and shall be made available for public review through formal notice.

(b) The comprehensive analysis of each division, function, and duty shall consist of the following requirements:

(1) A comprehensive analysis of each existing division, function, and duty performed by the department in providing environmental services; and

(2) A comprehensive comparative analysis of the functions and duties to be performed through the proposed alternative organization with regard to improved efficiency, effectiveness, responsiveness, and accountability to the people.

(c)(1) The strategic plan shall outline a management organization for the department that promotes environmental protection and enhancement.

(2) Such management organization shall consist of the following requirements:

(A) To establish an integrated agency information system that:

(i) Ensures compatibility between state standards and facility identification and location data standards established by the United States Environmental Protection Agency;

(ii) Reduces reporting and record-keeping burdens on industry;

(iii) Establishes a public participation process to define and adopt reporting and data management reforms;

(iv) Measures improvements in waste reduction recycling of waste materials, conservation and reuse of resources, and pollution prevention; and

(v) Expands public access to environmental performance information;

(B)(i) To institute environmental performance indicators to measure progress in protecting and enhancing the environment.

(ii) Such indicators shall emphasize waste reduction, recycling of waste materials, conservation and reuse of materials, and pollution prevention, and shall be formulated using numeric goals and expressed in plain language terms.

(iii) Such indicators shall be developed by a work group appointed by the Director of the Arkansas Department of Environmental Quality consisting of representatives of the department working in collaboration with representatives from state and federal agencies, city and county officials, nonprofit organizations, minority groups, industry, colleges and universities, civic groups, and other stakeholders in environmental affairs;

(C) To organize the department according to business functions and duties;

(D) To establish a performance-based financial management system that links expenditures within divisions, functions, and duties to environmental protection and enhancement; and

(E) To embody the above elements into a reorganization plan which provides for the scheduling of any transfer of functions and duties, acquisition of equipment, development of procedures, programming, records, documents, properties, assets, funds, liabilities, and bonding resulting from the proposed changes.

**History.** Acts 1999, No. 1316, § 1.

## CHAPTER 14

### SHIELDED OUTDOOR LIGHTING ACT

#### SECTION.

8-14-101. Title.

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8-14-104. Shielding — Prohibitions —  
Exemptions.

#### SECTION.

8-14-105. Penalties.

8-14-106. Enforcement.

8-14-107. Provisions supplemental.

#### 8-14-101. Title.

This chapter shall be known and may be cited as the “Shielded Outdoor Lighting Act”.

**History.** Acts 2005, No. 1963, § 1.

**8-14-102. Purpose.**

The purpose of this chapter is to conserve energy and preserve the environment through the regulation of outdoor lighting fixtures.

**History.** Acts 2005, No. 1963, § 1.

**8-14-103. Definitions.**

As used in this chapter:

(1) "Outdoor lighting fixture" means an automatically controlled, outdoor artificial illuminating device, whether permanent or portable, used for illumination or advertisement, including searchlights, spotlights, and floodlights, whether for architectural lighting, parking lot lighting, landscape lighting, billboards, or street lighting; and

(2) "Shielded" means a fixture that is covered in a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

**History.** Acts 2005, No. 1963, § 1.

**8-14-104. Shielding — Prohibitions — Exemptions.**

(a) After January 1, 2006:

(1)(A) No public funds shall be used to install an outdoor lighting fixture unless it is shielded.

(B) Subdivision (a)(1)(A) of this section shall not apply to any municipality or county if the governing body of the municipality or county determines by ordinance or to a municipally owned utility if the municipal employee responsible for procurement determines that the cost of acquiring a shielded outdoor lighting fixture will be prohibitive after comparing:

(i) The cost of the fixtures; and

(ii) The projected energy cost of the operation of the fixtures;

(2) The Arkansas Department of Environmental Quality shall promulgate regulations prohibiting any person or entity from knowingly placing or disposing of the bulb or tube portion of an electric lighting device containing hazardous levels of mercury in a landfill after January 1, 2008, if:

(A) The device contains more than two-tenths milligram per liter (0.2 mg/l) of leachable mercury as measured by the Toxicity Characteristic Leaching Procedure as set out in EPA Test Method 1311; and

(B) Adequate facilities exist for the public to properly dispose of the device described in subdivision (a)(2)(A) of this section; and

(3)(A) Each electric public utility shall offer a shielded lighting service option.

(B) Not later than January 1, 2006, each electric public utility shall file an application with the Arkansas Public Service Commission to establish a schedule of rates and charges for the provision of a shielded lighting service option to the utility's customers.



(C) The commission shall require each electric public utility to inform its customers of the availability of the shielded lighting service.

(b) This chapter does not apply to acquisitions of:

(1) Incandescent outdoor lighting fixtures of one hundred fifty watts (150W) or less or other light sources of seventy watts (70W) or less;

(2) Outdoor lighting fixtures on advertisement signs on interstate or federal primary highways;

(3)(A) Outdoor lighting fixtures existing and legally installed before August 12, 2005.

(B) However, if an existing outdoor lighting fixture exempted from this chapter under subdivision (b)(3)(A) of this section needs to be replaced, the acquisition of the replacement outdoor lighting fixture shall be subject to the provisions of this chapter;

(4) Navigational lighting systems at airports or other lighting necessary for aircraft safety; and

(5) Outdoor lighting fixtures that are necessary for worker safety at farms, ranches, dairies, or feedlots or industrial, mining, or oil and gas facilities.

(c) This chapter does not apply to outdoor lighting fixtures maintained or installed by:

(1) A public school district;

(2) A correctional facility;

(3) A juvenile detention facility;

(4) An adult detention facility;

(5) A mental health facility; or

(6) A state-supported institution of higher education.

**History.** Acts 2005, No. 1963, § 1; 2006 (1st Ex. Sess.), No. 11, § 1; 2007, No. 124, § 1; 2007, No. 452, § 1; 2007, No. 470, § 1.

**Amendments.** The 2007 amendment by No. 124 added (c).

The 2007 amendment by No. 452 added (a)(2)(A) and (a)(2)(B) and made a minor stylistic change.

The 2007 amendment by No. 470 added (c)(6) and made related and stylistic changes throughout (c).

## 8-14-105. Penalties.

Violations of this chapter are punishable by:

(1) A warning for a first offense; and

(2) A fine of twenty-five dollars (\$25.00) minus the replacement cost for each offending outdoor lighting fixture for a second or subsequent offense or for an offense that continues for thirty (30) calendar days from the date of the warning.

**History.** Acts 2005, No. 1963, § 1.

## 8-14-106. Enforcement.

This chapter may be enforced by a town, city, or county of this state by seeking injunctive relief in a court of competent jurisdiction.

**History.** Acts 2005, No. 1963, § 1.

**8-14-107. Provisions supplemental.**

The provisions of this chapter are cumulative and supplemental and shall not apply within a town, city, or county of this state that by ordinance has adopted provisions restricting light pollution that are equal to or more stringent than the provisions of this chapter.

**History.** Acts 2005, No. 1963, § 1.

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**Government.**

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**Source separation.**

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**Supplier.**

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**Terminal.**

Petroleum storage tank trust fund,  
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**Trade secret.**

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